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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MARK I. SOKOLOW, et al.,

Plaintiffs,

v.

04 CV 397 (GBD)

PALESTINE LIBERATION  
ORGANIZATION, et al.,

Defendants.

New York, N.Y.  
January 13, 2015  
9:30 a.m.

Before:

HON. GEORGE B. DANIELS,

District Judge

APPEARANCES

ARNOLD & PORTER LLP  
Attorneys for Plaintiffs

BY: KENT A. YALOWITZ  
PHILIP W. HORTON  
TAL MACHNES  
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MILLER & CHEVALIER, CHARTERED  
Attorneys for Defendants

BY: MARK J. ROCHON  
LAURA G. FERGUSON  
BRIAN A. HILL  
MICHAEL SATIN

Also present: RACHELLE AVITAL, Hebrew interpreter  
RINA NE'EMAN, Hebrew interpreter

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(case called)

THE COURT: We are gathering the prospective jurors together. We may have one issue with regard to a juror that's not among the first 28. We may have an issue with regard to a juror that's in the first eight. But I think that the information I have been given so far is that one of the jurors had a serious heart condition and was rushed to the hospital for some procedure or operation. That juror is obviously not going to be available for this trial. It is not a juror, as I said, that's in the first 28 that was pulled out of the wheel so that shouldn't be an issue. I have sketchy information right now, but I think that juror is number 17.

Also, I am getting some information now about another juror. I will discuss it in a second. If this juror is here, then it's not a problem. As I get some information about whether or not they are all here, I should get that in the next five to ten minutes.

I have received some letters this morning. Let me first go to the letter that I received from the defense about an objection to some attached exhibits. I received the letter from Mr. Hill.

MR. HILL: Yes, your Honor.

THE COURT: You haven't seen any of these exhibits that are proposed to be used with Mr. Kaufman.

MR. HILL: With respect to the ones we attached, which

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1 are photographed as the car and the stone building, the one  
2 that looks like a map with some writing on it, and the one that  
3 has a stone building on it, we have never received those prior  
4 to last night.

5 THE COURT: Is that what you're objecting to?

6 MR. HILL: Yes, your Honor.

7 THE COURT: The stone building photograph?

8 MR. HILL: The first three attached to my letter, your  
9 Honor.

10 THE COURT: Mr. Yalowitz, what is the situation with  
11 these?

12 MR. YALOWITZ: This is one of those things, your  
13 Honor, where if the parties talked to each other, we wouldn't  
14 have to waste the Court's time. These are demonstratives that  
15 I prepared to help the jury put a location to Mr. Pearlman's  
16 testimony. Mr. Pearlman is an eyewitness. I took a map off  
17 Google maps. Mr. Pearlman drew a box of where his flower shop  
18 is and where the bus blew up and that's what that map is.

19 Then the two photographs are from Google street view.  
20 I pulled them off the Internet so that Pearlman can show a  
21 scene of what his flower shop is and where the bus was just so  
22 the jury can understand it. They are demonstratives. I am not  
23 offering them in evidence. We can offer them in evidence.

24 THE COURT: My ruling is this. If you're not offering  
25 them in evidence, they are not shown to the jury. They are not

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1 a demonstrative; they are substantive evidence.

2 MR. YALOWITZ: Then consistent with your rule,  
3 Mr. Pearlman will foundationalize them.

4 THE COURT: Is there any reason why these pictures  
5 weren't produced in a more timely manner?

6 MR. YALOWITZ: The reason is because I thought we  
7 would use them as demonstratives. We met with Pearlman about  
8 three weeks ago in Israel and pulled them off the Internet and  
9 I just didn't think they needed to be produced. So it's my  
10 fault, my personal fault.

11 THE COURT: Mr. Hill, you tell me, is there some  
12 reason we should be fighting about these photographs?

13 MR. HILL: Timing, your Honor. It's the day before  
14 trial. If you don't stop this now, I assume every night before  
15 trial I am going to get new stuff.

16 THE COURT: You don't have to assume that.

17 The bottom line is that my position is this. I am  
18 going to start strictly enforcing the rule. I don't  
19 particularly see any undue prejudice with regard to these  
20 photographs, and I don't know what you or he might want to do  
21 with these photographs, but at this point in time, as I say,  
22 it's time for me to start strictly enforcing the rule.

23 As you say, Mr. Yalowitz, it would be more helpful if  
24 the parties would talk, but that burden is on you, not on them,  
25 when you have an exhibit that you say you want to offer and you

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1 have never shown them that exhibit prior to the first day of  
2 trial. I can't fault them for that. I fault you for that.

3 MR. YALOWITZ: I accept responsibility, your Honor. I  
4 misunderstood the Court's views.

5 THE COURT: I didn't make these rules up. These are  
6 the rules of the court.

7 MR. YALOWITZ: I accept responsibility. I don't see  
8 any prejudice to them. I will not let that happen again. We  
9 are talking about a three-week delay. What we are talking  
10 about is photographs that the witness can say, this is my  
11 flower shop, this is what it looks like.

12 THE COURT: The witness could have said that during  
13 deposition, during discovery. As I say, I agree with you, I  
14 see minimal prejudice to the defense with regard to these  
15 photographs, but I am going to start strictly enforcing the  
16 rule.

17 Mr. Hill, if you want these photographs out, they are  
18 going to be out.

19 MR. HILL: I want them out. I also want the  
20 PowerPoint that I received last night out as well.

21 THE COURT: That's what I asked you. I asked you if  
22 you had an objection and you said you had objection to the  
23 first three.

24 MR. HILL: You asked about the photographs.

25 THE COURT: I asked you what you had objection to.

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1 You said you just had an objection to the first three.

2 MR. HILL: I also object to the PowerPoint, which I  
3 also received for the first time last night.

4 THE COURT: Is there anything else you object to?

5 MR. HILL: We object to the materials that are  
6 referenced in the PowerPoint that were not produced during  
7 discovery as well as the other exhibits that were not produced  
8 during discovery that they intend to use with Mr. Kaufman and  
9 Mr. Pearlman.

10 THE COURT: Mr. Yalowitz, is there some reason why you  
11 didn't produce this PowerPoint that you apparently had  
12 generated by your expert?

13 MR. YALOWITZ: First of all, the PowerPoint wasn't  
14 done until after court yesterday. We had to adjust it based on  
15 some of the Court's rulings.

16 I have been practicing law for 25 years, trying cases  
17 for almost that long. I have never had an adversary say, I  
18 object to your PowerPoint with an expert. You're not going to  
19 let me use these photographs. I think you're giving them  
20 something they don't deserve. But if we are going to start  
21 having every day objections to expert PowerPoints, that's  
22 ridiculous.

23 THE COURT: We are going to have what the rule was as  
24 I set down, Judge Ellis set down, and it was clear for both  
25 sides. If you were going to produce something that you want

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1 before the jury at trial as an exhibit, it should be produced  
2 during discovery. If it wasn't produced during discovery, then  
3 it's not going to be before this jury. This was not produced  
4 during discovery.

5 My position is this. With regard to the photographs,  
6 if the defendants are objecting to these photographs, since  
7 these photographs could have been obtained and a decision could  
8 have been made and they could have been provided to the defense  
9 during discovery, or at least even if it wasn't during  
10 discovery at a significantly earlier time than the day of  
11 trial, I am going to exclude those photographs.

12 My position is different with regard to the map. The  
13 map is something that the witness could create in the middle of  
14 the trial. It would not have to have been an existing map  
15 prior to. If you want to show him a map and have him mark on a  
16 map where his flower shop was, then I think that's appropriate  
17 and the witness can create such an exhibit during trial. I see  
18 very a little prejudice with regard to the defense, and I think  
19 the intent of the rule that's set down, that's not in violation  
20 of the intent, giving both sides notice of what they can  
21 anticipate as evidence to be put before the jury.

22 With regard to the PowerPoint, I am not going to allow  
23 the PowerPoint during the witness's testimony to be used by the  
24 witness. If you want to create a PowerPoint that is truly  
25 demonstrative, then a demonstrative exhibit is an exhibit that

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1 the lawyer wants to utilize during summation which summarizes  
2 the evidence or the testimony during the trial.

3 Now, if you want to create a PowerPoint that you want  
4 to use during your summation, that's based on the testimony  
5 that's put before the jury and/or exhibits that are put before  
6 the jury, I have no problem with you using such a PowerPoint as  
7 a demonstrative aid during your arguments if it reflects the  
8 evidence that is already before the jury.

9 With regard to the witness now creating a PowerPoint  
10 to reflect what he did before he got here and his analysis of  
11 the situation, if you want to utilize such a PowerPoint, then  
12 they should have had some notice of it. My rule would have  
13 been the same if their expert pops up with a PowerPoint that  
14 they want to put before the jury during their testimony.

15 So my suggestion to both sides is, if you have  
16 something that you think that's going to go before this jury  
17 that the other side hasn't seen, then you better very promptly  
18 show it to them because I am going to start strictly enforcing  
19 the rule, that if they have not seen it prior to today, it's  
20 not coming in.

21 MR. YALOWITZ: Let me just understand the Court's  
22 ruling on this because I have to say it really comes as a  
23 surprise to me.

24 THE COURT: It should not.

25 MR. YALOWITZ: OK. I accept that you're saying that,



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1 but I am telling you I think we have been candid with each  
2 other, your Honor.

3 THE COURT: I agree, but I think you violated this  
4 rule.

5 MR. YALOWITZ: I am telling you this comes as a  
6 serious surprise to me, and I wouldn't say that if I didn't  
7 believe it.

8 THE COURT: What do you think the rule means that you  
9 can't put an exhibit before the jury unless the other side has  
10 previously seen it prior to the beginning of the trial?

11 MR. YALOWITZ: My understanding was demonstrative aids  
12 can be used during witness testimony. That is a pretty common  
13 practice.

14 THE COURT: A photograph is not a demonstrative aid.  
15 There is no difference between your photograph where you want  
16 to put before them today and the photographs that we discussed  
17 over the last several weeks that are exhibits. These are not  
18 demonstrative aids.

19 MR. YALOWITZ: I am not talking about the photographs.  
20 I accept the Court's ruling on that and moving on. I am  
21 talking about the PowerPoints because it's not just this  
22 expert, it's experts coming down the road.

23 THE COURT: This expert is supposed to testify today  
24 or tomorrow. You think it's fair for you to give it to them  
25 less than 24 hours before the witness is going to utilize it

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1 for them to review it and decide how they are going to react to  
2 it?

3 MR. YALOWITZ: I had a discussion with the defendants  
4 about demonstratives. We offered to give demonstratives  
5 significantly in advance of the day before. They didn't want  
6 to do that. So the idea that now we go to no demonstratives,  
7 as long as it's equal.

8 THE COURT: Oh, it's equal. If there is something you  
9 want to show this jury during the presentation of evidence, if  
10 the other side has not seen it, I am not allowing it to be  
11 admitted as an exhibit to show the jury. It can't be shown to  
12 the jury during the trial unless it is admitted in evidence.  
13 All right? To be admitted in evidence means it is not a  
14 demonstrative. It means it is substantive evidence that the  
15 jury should consider in making its determination.

16 If you are going to offer something other than what  
17 you claim summarizes the testimony and the evidence that they  
18 have seen, and you want to use it to demonstrate your argument  
19 during your summation, then that's a demonstrative aid and that  
20 can be utilized. But if it doesn't reflect the testimony or  
21 the evidence that's already before the jury, you cannot put it  
22 in for the jury's review to use as substantive evidence.

23 That is what you're doing with this PowerPoint. If  
24 this expert was going to try to convince the jury of his point  
25 of view with this demonstrative, then the other side had the

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1 right to know that that was going to take place, if you want  
2 the jury to be able to review that and utilize it, and if they  
3 wanted to ask to see it during their deliberations. The rule  
4 is very simple that I did not make up, and I will instruct the  
5 jury this way, and you have seen it at the end of the draft of  
6 the instructions that I gave you. No exhibit that was not  
7 admitted in evidence will go into the jury room for their  
8 review. You can call it demonstrative, you can call it  
9 whatever you want to call it, but if it's not admitted into  
10 evidence, it does not go into the jury room for their  
11 consideration during deliberations.

12 Those are the rules. Those are the rules that have  
13 been around for 100 years or more. They are not my rules. So  
14 that's the rule I am going to enforce. I am no longer going to  
15 listen to the lawyers talk about they should have discussed it.  
16 The lawyer who is disadvantaged for not discussing it is the  
17 lawyer who wants to now put the evidence in, and they did not  
18 make sure that they shoved it in front of the face of the other  
19 lawyer to make sure that they had no objection or to make sure  
20 they could not raise a legitimate objection at the last minute.  
21 Whatever you think that you have that they haven't seen, you  
22 better show it to them or it's not coming in.

23 MR. YALOWITZ: I hear you on that. I need guidance  
24 from you, your Honor.

25 THE COURT: My guidance is I mean what I say.

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1 MR. YALOWITZ: I need you to separate out the timing  
2 and the substance, if you can for me. Because I have other  
3 experts who it will be very helpful to the jury when the expert  
4 is talking about a perpetrator to see a photograph of the  
5 perpetrator.

6 THE COURT: Well, if those photographs were shown to  
7 the defense --

8 MR. YALOWITZ: They were.

9 THE COURT: -- previously, then they don't have a  
10 legitimate objection. If the expert pulls it out of his hat  
11 while he is sitting on the stand, and they say I have never  
12 seen this photograph, my rule is fairly simple. It's not  
13 coming before the jury.

14 MR. YALOWITZ: Agreed. It will be very helpful for  
15 the jury, when the expert is testifying, to see the name of the  
16 person next to his photograph.

17 THE COURT: That's different. Those are things that  
18 are technically being created while the witness is testifying.  
19 As long as whatever demonstrative you use reflects the evidence  
20 that's already before the jury, that's the way the rule works.

21 MR. YALOWITZ: Right.

22 THE COURT: There is no magic about this. If it  
23 reflects the testimony or the other evidence before the jury in  
24 an exhibit, then you can represent it or create something that  
25 represents it any way you want and use it as a demonstrative by

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1 yourself or try to create an exhibit that shows a bunch of  
2 people's names and faces and show that to the jury, if those  
3 items of evidence are items of evidence that the party has seen  
4 and has been admitted into evidence.

5 MR. YALOWITZ: Well, that's what this PowerPoint is.

6 THE COURT: That's not what this PowerPoint is. The  
7 PowerPoint seems to represent what you say he is going to say.  
8 You want him to say it and show it at the same time. I am not  
9 going to allow that. We will listen to his testimony. As far  
10 as I am concerned, this doesn't fall outside of the category of  
11 any report that an expert does. This expert has created this  
12 in writing, and has created this in writing prior to the  
13 beginning of this trial. You have an obligation to give them  
14 everything that this expert has created prior to trial that  
15 relates to his testimony, particularly if it's going to be  
16 utilized during his testimony and shown to the jury.

17 You didn't do that. That's the guidance that I can  
18 give you. We are not going to start doing this. If you think  
19 that some things you want to use, in an excess of caution, you  
20 should make sure that they have seen it, and they have seen it  
21 in plenty of time so I don't have to hear an argument that you  
22 didn't show this to them, and you had an opportunity to do so,  
23 and now you want to do so. No, it's not fair for you to give  
24 them something 12 hours before we are supposed to get it before  
25 the jury and say, here, now you look at it and figure out what

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1 you want to do with it. I am not going to do it.

2 MR. YALOWITZ: We have got another expert coming  
3 tomorrow. We will get them his PowerPoint as soon as we can.  
4 It doesn't refer to any evidence that they haven't seen, number  
5 one. Number two, he is going to build it on the fly. So we  
6 will get it to them this morning as soon as we can, but you're  
7 going to really hamstring me if you don't let the  
8 expert -- it's just like a flip chart. If the expert was going  
9 to write on a flip chart --

10 THE COURT: You can let him write on a flip chart,  
11 because you did not produce the exhibit that you created prior  
12 to this witness getting on the stand that you decided prior to  
13 the witness's testimony that you wanted to put physically  
14 before the jury for the jury's review. I am not going to allow  
15 you to do that. If you have some other things that you think  
16 they have not seen, I don't care how you describe it, if they  
17 haven't seen it prior to trial, I am not going to admit it at  
18 this trial. If they haven't shown you something prior to  
19 trial, if you have an objection to that, I am not going to  
20 admit it. That's the rule we set down months ago, if not years  
21 ago. It's time to strictly enforce that rule. No one has any  
22 excuse for having something that they say they are going to put  
23 before the jury at this point and the other side has not seen  
24 it. No excuse.

25 MR. YALOWITZ: They are bamboozling the Court. They

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1 haven't seen it in the order, but this is a summary of  
2 documents that they have had for years.

3 THE COURT: My attitude is very simple and this is the  
4 last word on it. If you say that not having the PowerPoint is  
5 sufficient for them to have prepared for this trial and to  
6 understand this case, then that's sufficient for the jury, and  
7 you're not going to give the jury something different or more  
8 than the other side has at this point.

9 That's the rule for everybody. I am not talking to  
10 you. I am talking to everyone. All right? I am not going to  
11 spend a lot more time on these kinds of issues. If you say you  
12 haven't seen it and the other side cannot tell me that they  
13 have produced this either during discovery or in a timely  
14 manner after discovery, which gave the other side plenty of  
15 time to prepare for this and utilize it in whatever manner they  
16 wanted to utilize it, it is not coming in.

17 MR. YALOWITZ: I think, your Honor, I understand the  
18 Court's ruling. I understand it applies to both sides. Before  
19 we reach a final conclusion on this, I think Mr. Rochon and I  
20 should consult at a break because we may be able to come to  
21 agreement on it. If we can't, both sides will follow the  
22 Court's ruling.

23 THE COURT: If you can come to agreement that's fine,  
24 but otherwise this is the final ruling.

25 I am going to put that aside. Let me see where we are

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1 with the jurors.

2 MR. ROCHON: I have one quick issue with the jurors.

3 Obviously there is a lot of interested people in this  
4 case. Many of them are in the audience today, lawyers or  
5 plaintiffs. Obviously, contact with jurors is a very serious  
6 issue. This morning the lead lawyer for the plaintiffs in  
7 Israel came out of the jury assembly room. Fortunately, as I  
8 understand it, our jurors were not instructed to go there. But  
9 it is obviously a grave risk for counsel, especially  
10 experienced counsel, to be going into the jury assembly room.  
11 I am not asking for any relief because our jurors could not  
12 have been tainted because as I understand it they were not sent  
13 there, but the risk is extraordinary. I do think that the  
14 defendants would at least benefit from the Court instructing  
15 people about the importance of having no contact with the  
16 jurors. That could have been a significant problem.

17 THE COURT: I intend to do that, and I have taken  
18 steps to assure that we can minimize that. I can tell you at  
19 this point you're right. I did not have the jurors return to  
20 the central jury room; I had them return to a different  
21 courtroom. They have been amassing in that different  
22 courtroom. I have made arrangements with the court officers to  
23 make sure that the court officers are able to escort the jurors  
24 off of this floor during our breaks so that no one gets in the  
25 elevator with the juror. I want no one hanging out in the hall



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1 when the jurors are arriving, and there will be a court officer  
2 who is going to be assigned to make sure there is no contact  
3 between jurors, parties, or any other interested spectators.

4 I have taken serious precautions for that. I intend  
5 to emphasize that. I will tell the jurors what I am going to  
6 say right now, that I expect that no one will speak to these  
7 jurors, no one will speak around these jurors, no one will talk  
8 about this case while they are in this building. That rule  
9 goes for everyone who steps into this courtroom and everyone  
10 who has any interest whatsoever in this case. If I find out  
11 that that's the case, I will take some action against that  
12 party, whether it be a lawyer, their client or a spectator.

13 You can minimally anticipate that if someone violates  
14 that rule, they will not be attending this trial on any further  
15 days during this trial. So let me emphasize that. That's the  
16 first step that I will take. They will forfeit their right to  
17 attend this trial if I find out that anyone is speaking about  
18 this case while they are in this courthouse or they have spoken  
19 or attempted to have contact with the jury.

20 Let's move forward so we can finish jury selection and  
21 be prepared hopefully this afternoon to begin with opening  
22 statements.

23 MR. ROCHON: If we have a down moment, if it's OK to  
24 address something.

25 THE COURT: Yes.

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1 MR. ROCHON: I know you're going to be bringing the  
2 jurors in. Obviously, there are a lot of people here already.

3 THE COURT: I am moving everyone out of this side of  
4 the courtroom and the jurors are going to utilize that side of  
5 the courtroom. Everyone will have to find seats on the other  
6 side or they will have to stand.

7 MR. YALOWITZ: Your Honor, I have a couple of things.  
8 First of all, do you mind if counsel wanders away from  
9 the podium?

10 THE COURT: Down the street?

11 MR. YALOWITZ: Some people walk around a little bit.  
12 Some judges don't like that.

13 THE COURT: I will give you as much leeway in that  
14 regard as you would like.

15 MR. YALOWITZ: Second of all, as your Honor has  
16 observed, both sides have advisors about jury selection. I  
17 would like mine as close to me as possible because I am not  
18 very good at it. But I don't want him here if the Court is  
19 going to introduce him as a jury consultant.

20 THE COURT: I am not going to introduce any of the  
21 parties at this point. I am going to let you introduce  
22 yourselves and introduce the parties when you do your openings.

23 MR. YALOWITZ: That is perfect.

24 The third thing is, the Court wanted the names of  
25 plaintiffs who are here for opening. You want to deal with

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1 that after?

2 THE COURT: Let's deal with that after.

3 MR. HILL: Before we bring the jurors in there were  
4 letters last night from us and one this morning from the  
5 plaintiffs about prospective questions. I think we have some  
6 objections to the plaintiffs' proposed questions so maybe you  
7 could rule on those before the jurors come in.

8 THE COURT: Sure.

9 MR. HILL: Your Honor, I believe one of the witnesses  
10 may also be in the courtroom. I think at this point any  
11 witnesses should be excused, other than parties.

12 THE COURT: The basic rule is anyone who is not a  
13 party, a plaintiff or a defendant's representative or anyone  
14 who is not an expert should be excluded.

15 MR. YALOWITZ: I don't know if he is here yet. Our  
16 first witness is here. He saw the bus blow up.

17 THE COURT: I don't care what kind of witness he is.  
18 If they want him excluded then that's going to be the general  
19 rule. All witnesses will be excluded until it's time for them  
20 to testify.

21 MR. YALOWITZ: Unless they are a party or an expert?

22 THE COURT: Yes. If there is such a witness, fact  
23 witness, then that witness can wait in the witness room.

24 MR. YALOWITZ: OK. Fine. Thanks.

25 THE COURT: I don't have any problems with the

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1 substance of the defense questions that they want.

2 I don't have significant problems with most of the  
3 substance of the questions that the plaintiff wants me to ask  
4 except I am still not going to ask jurors specifically about  
5 their assessment of damages. I rarely have to do that. The  
6 jurors said they can follow my instructions on the law. They  
7 have already been instructed that that is what this case is  
8 about. I don't need to emphasize that point one way or the  
9 other.

10 Also, that was probably, in essence, the only thing  
11 that I didn't think that there was some question with regard to  
12 the subject matter that I could ask, but I didn't know if you  
13 had any other objection.

14 MR. HILL: Three issues. One, we had requested in our  
15 letter with respect to the two jurors that had lost loved ones,  
16 that they would be allowed to answer those questions at the  
17 bench.

18 THE COURT: I am not quite sure what you want me to  
19 ask, the ones who lost loved ones in 9/11 or lost loved  
20 ones --

21 MR. HILL: No, I don't believe these were 9/11.

22 THE COURT: Then I am not sure which ones we are  
23 talking about.

24 MR. HILL: Number 20 and Number 162, one has indicated  
25 they are widow and one has indicated that they had a -- I can't

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1 remember the exact relation -- who was killed in a crime.

2 THE COURT: What do you want me to ask people about  
3 that?

4 MR. HILL: Would you please tell us when you lost your  
5 loved one and what happened?

6 THE COURT: Why?

7 MR. HILL: Because it may affect their ability to be  
8 impartial in the case and it may affect our desirability to  
9 choose them.

10 THE COURT: I am not quite sure why it's relevant to  
11 their qualifications as a juror.

12 MR. HILL: It's not only qualifications, it would be  
13 peremptories. The reason they lost people, that may affect  
14 whether or not we want them on the jury and want to exercise  
15 one of our peremptories.

16 THE COURT: Mr. Yalowitz, do you have a position one  
17 way or the other about the nature of that inquiry?

18 MR. YALOWITZ: It seems far afield to me and  
19 intrusive. I don't think it's necessary. I defer to the  
20 Court's judgment. I am not going to fight it, but I don't  
21 think it's appropriate.

22 THE COURT: What do you want to know?

23 MR. HILL: Just the circumstances of the deaths, if  
24 they were killed in an act of violence, for example, that is  
25 something that we would like to know about. One of these

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1 people indicated they were killed as a result of a crime. We  
2 would like to know what happened so we can make a judgment  
3 about whether or not that rises to the level of a cause  
4 challenge or whether or not we want to use a peremptory.

5 THE COURT: I will make some initial inquiry in that  
6 regard but I am not going to do it at sidebar. I will ask the  
7 juror if they feel comfortable saying something and if they  
8 want to tell us there, they can just tell us in general what  
9 happened; if they want to do so privately, then I will bring  
10 them up to sidebar.

11 MR. HILL: Thank you, your Honor.

12 The only other two issues I had was with respect to  
13 the questions the plaintiffs wanted to pose to Juror Number 57  
14 where they wanted to ask about a particular organization that  
15 they are a member of. It is my understanding it is a religious  
16 organization. Given the Court's decision to not allow any  
17 inquiry about religious views, I would ask that this particular  
18 juror not be asked about their religious views.

19 THE COURT: Quite frankly, I don't have a real problem  
20 with asking about this from my perspective. And my perspective  
21 is, I don't know anything about this organization or what it  
22 does and I don't think it's inappropriate for me to ask, if  
23 they say they belong to this organization, if they can explain  
24 to me what kind of organization this is and what kind of  
25 involvement they have in the organization.

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1 MR. HILL: The only other issue I had is with respect  
2 to the question that the plaintiffs wish to pose to Juror  
3 Number 186 which is the very last one. It's about the burden  
4 of proof. I don't think it's appropriate to --

5 THE COURT: I am not going to ask that question.

6 MR. HILL: Thank you, your Honor.

7 THE COURT: I will give the jury appropriate  
8 instructions. I think there may even be some language in the  
9 final instructions that I am working on.

10 Let me tell you where we are. We have several jurors  
11 absent. I think it's appropriate to move forward.

12 As I indicated, Number 17 has a serious medical  
13 problem so that juror is going to be excused.

14 There is a juror, though, in the first eight who we  
15 are missing. That's Juror Number 93. I will just give you  
16 some basic information as I have it. We attempted to reach out  
17 to that juror yesterday to notify the juror to come in. I was  
18 told that the telephone has been disconnected and that juror  
19 could not be reached. We did some research and it appears that  
20 the juror may be homeless at this point. The juror may be  
21 staying at the YMCA. We are not quite sure what the situation  
22 is but we sent out some information to try to reach that juror.  
23 There has been no contact with that juror. As I say, the  
24 contact information we have, the phone is disconnected and  
25 there is no way to contact the juror. I think we did send some

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1 information to the local YMCA to try to have them reach out to  
2 this juror but we have not heard from this juror and this juror  
3 is not here today. That's Juror Number 93.

4 So my suggestion is that we move forward, replace  
5 Juror Number 93 with the first person that you said that you  
6 wanted me to pull out of the wheel as the second ten.

7 MR. HILL: That would be Juror Number 25 numerically.

8 THE COURT: No. That's not what I have. That would  
9 be the first juror whose name was pulled out of the wheel after  
10 we did the 18 which was Juror Number 159. You said you wanted  
11 me to pull an extra ten because you wanted to know who the next  
12 juror would be if we replaced a juror. The next juror would be  
13 the juror whose name was pulled out of the wheel and that would  
14 be 159.

15 MR. HILL: The reason why I am asking for 25 is that  
16 25 is the next juror that we had designated acceptable. 93 who  
17 has not appeared for whatever reason is one of the jurors we  
18 had designated acceptable.

19 THE COURT: That's not of the first 28 that we picked.  
20 It's not a juror in the first 28.

21 MR. HILL: Number 159 is a juror that plaintiffs have  
22 designated as acceptable.

23 THE COURT: No. You told me you wanted me to pick a  
24 second ten so that if we lost one of the 18, we would replace  
25 one of those jurors with one of those ten. That's what I



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1 intend to do. This is what you agreed upon.

2 MR. HILL: I don't believe we agreed to it.

3 THE COURT: Why did I pick ten extra?

4 MR. HILL: So we would know who was in the batting  
5 order.

6 THE COURT: He is in the batting order. That is the  
7 whole point. Now it is time that he is at bat. Let's go,  
8 guys.

9 MR. HILL: Your Honor, I just want the record to  
10 reflect that what has happened is, the juror that we designated  
11 as acceptable has not appeared and that person is being  
12 replaced with a juror the plaintiffs designated as acceptable.

13 THE COURT: So do you want me to chuck the second ten  
14 that you say were on deck that you asked me to put on deck  
15 because you asked me to do this -- I didn't do this.

16 MR. HILL: No, your Honor. I would like it to be  
17 replaced with the juror that we designated as acceptable; that  
18 is what I am asking because we are losing one that we  
19 designated as acceptable.

20 THE COURT: The fact is, you wouldn't have gotten that  
21 in any case. You would have gotten a random selection of  
22 jurors. That's what we did, a random selection of jurors. I  
23 put all of the people that you designated in the wheel. They  
24 did not come out of the wheel. That's not my fault or your  
25 fault. That's the luck of the draw. The luck of the draw is,

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1 this is the way you asked that the jurors be drawn to be seated  
2 and questioned. Now to try to change that process, unless the  
3 two of you want to agree with that, I am going to do what you  
4 agreed to and what you asked me to do which was to figure out  
5 18 who we are going to put in the box, that if we lost one of  
6 those 18, you would know who is on deck and who would fill that  
7 slot. We have lost 93 so 159 is on deck.

8 MR. HILL: I understand, your Honor.

9 THE COURT: We are missing four jurors. One other  
10 juror who is not in the 20, I think we are missing three other  
11 jurors and I don't believe any of those jurors are within that  
12 first group. One is in the second ten that you pulled but that  
13 is the ninth person. I doubt we are going to get to that  
14 person. So at this point I think that without any further  
15 delay we should bring the jurors down. We should put the 18 in  
16 the wheel. We should spin the wheel and seat those jurors in  
17 the order as we discussed previously.

18 MR. HILL: Your Honor, just so I have got it clear,  
19 are you saying number 57 is also absent?

20 THE COURT: Number 57 is absent.

21 MR. HILL: Thank you, your Honor.

22 THE COURT: I would like that side of the courtroom  
23 cleared. Find seats over there or find places to stand if you  
24 want to stay during the jury selection. Then we will bring in  
25 the jurors and we will seat those jurors.

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1 As I say, I don't want anybody lingering in the  
2 hallway. Anyone who comes to this floor, they either come into  
3 this courtroom or they leave the floor. I don't want people  
4 hanging around in the hallway.

5 (Pause)

6 THE COURT: Those people in front of the door, could  
7 you move over to the side, please.

8 We have a slight change. Number 57 has arrived.

9 Do the parties have an extra copy of the letters about  
10 voir dire so that I can give a copy to my law clerk?

11 The jurors are entering.

12 (Prospective jurors enter courtroom)

13 THE COURT: Please be seated, ladies and gentlemen.

14 Good morning, ladies and gentlemen.

15 First, let me thank you both for your patience and for  
16 your cooperation in this jury selection process.

17 We brought your number back. From your number we are  
18 going to choose the 12 jurors who will be sitting on this case.  
19 I appreciate your efforts in filling out the questionnaires.  
20 We already have a significant amount of information about you  
21 so I just have a few follow-up questions. And I want to ask  
22 each of you finally, before I move on to the next juror, if you  
23 still feel that you could be a fair and impartial juror to both  
24 sides, all sides, and that you can assure us all that you can  
25 be fair and impartial jurors.

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1           Let me just make a couple of comments first.

2           First of all, a lot of people think that this process  
3 is technically a process for us to decide whether you can be a  
4 fair and impartial juror in this case. Quite frankly, it's for  
5 you to decide because we can only go by what you say. We can  
6 only go by your honest assessment of your ability to put aside  
7 any preconceived notions, anything that you think you might  
8 have heard outside of this courtroom and to decide this case  
9 solely on the evidence presented in this courtroom.

10           I am being told that everyone is not in the room.

11           (Prospective jurors enter courtroom)

12           THE COURT: For now, ladies and gentlemen, just come  
13 in and stand on the side. We will get you seats in a second.  
14 We will be filling the jury box in a minute.

15           Come up to the front. Just give me five minutes and I  
16 will find seats for everyone. Please stay on this side so we  
17 can keep count of you.

18           (Continued on next page)

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1 THE COURT: Is there anything we should address before  
2 we adjourn for lunch?

3 MR. ROCHON: We did have an issue with redactions. We  
4 are going to talk about it only if they are going to use the  
5 things in opening. Just the redaction goes to the convictions  
6 and the statements at sentencing. And I should ask if  
7 Mr. Kaufman is here, this does relate to his actual testimony.  
8 He is an expert and I defer to the Court on your rules. If  
9 this is a discussion that relates to his testimony, whether he  
10 can remain or not.

11 THE COURT: Is he here?

12 MR. ROCHON: He was here before the break.

13 THE COURT: He is an expert. He comments upon  
14 whatever he comments upon in his expert opinion. So I think he  
15 can stay.

16 MR. ROCHON: We appreciated the opportunity to look at  
17 the redactions. This is an example of why we really do need to  
18 get these things sooner. As it turns out, there was one thing  
19 in here that I'm sure the plaintiffs inadvertently left in  
20 which was a direct reference to the Abu Talal name, about which  
21 we fought so much. And I've confirmed it is an oversight, but  
22 it is why we need a lot of time.

23 In addition, there are other references in there that  
24 we think should not be in there. They're not properly redacted  
25 in light of your rulings.

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1 THE COURT: What is the nature of them? I don't need  
2 the substance.

3 MR. ROCHON: If we get in the weeds, Mr. Satin will  
4 address it. I'll give you the big picture which is all I'm  
5 capable of.

6 There are direct references that implicate Yassir  
7 Arafat in that people are saying he did this, he did that. Not  
8 general references to him as leader, but pointing the finger at  
9 him. So there are those kinds of references we discussed.  
10 There are statements in one file of what specifically another  
11 individual said. Muhammad Hashaika. We recognize that the  
12 names of suicide bombers aren't being redacted, but if it is  
13 Muhammad Hashaika said X, Y, or Z, then we have the hearsay  
14 problems.

15 THE COURT: This is part of the indictment or part of  
16 the judgment?

17 MR. ROCHON: I believe, in that instance, part of the  
18 indictment. And I've now -- those are the major problems. I  
19 didn't spend my time looking at these redaction. There are  
20 some other things.

21 THE COURT: Before we get into the details of that, do  
22 you understand the nature of their objections?

23 MR. YALOWITZ: This is the first time I'm hearing  
24 about it, your Honor.

25 MR. ROCHON: We had a call last night with your team,

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1 at your request.

2 THE COURT: Do you know about the Yassir Arafat  
3 objection?

4 MR. YALOWITZ: First time I'm hearing about it. But  
5 yes, look, if they have proposed redactions, they should send  
6 them to us and we'll look at them. I can't comment.

7 THE COURT: I don't know why I have to be the one to  
8 say that. I assumed that's common sense at this point, even  
9 appropriate lawyering. Look, talk to each other. Tell them  
10 what you want out, and have him agree that it's coming out or  
11 have him say I refuse to take that out. And then we will  
12 discuss it as soon as we get back. But I am not going to spend  
13 a lot of time on it.

14 MR. ROCHON: Judge, just so you know, we've had that  
15 conversation not with Mr. Yalowitz. With part of the army of  
16 lawyers. We had it last night.

17 THE COURT: Mr. Yalowitz, have your lawyers had that  
18 conversation?

19 MR. YALOWITZ: I haven't seen any particular  
20 redactions that they proposed. I had a generalized  
21 conversation, your Honor, in which they said we hate everything  
22 you've done and you've got to redo everything.

23 MR. ROCHON: No.

24 MR. YALOWITZ: That is not a useful conversation.

25 THE COURT: Gentlemen, this is not a useful

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1 conversation.

2 MR. YALOWITZ: I agree.

3 THE COURT: As we say, what we have is a failure to  
4 communicate.

5 MR. YALOWITZ: I agree.

6 MR. ROCHON: One of my favorite movies.

7 THE COURT: My suggestion is some representatives from  
8 one side offer themselves up as the person who will resolve this  
9 issue. Get it resolved. Otherwise, I am going to resolve this  
10 in 30 seconds when we get back here. So resolve what you can.  
11 Key it up for me what the disagreement is. And let's move  
12 forward. It is a little late in the day for us to be arguing  
13 about this and for you to be telling me that the two of you  
14 haven't even discussed this.

15 MR. ROCHON: I just want to say we did -- we sent an  
16 e-mail. We had the discussion last night.

17 THE COURT: I assume they didn't give you a response  
18 that was satisfactory.

19 MR. SATIN: May I?

20 MR. YALOWITZ: Why don't we have a conversation not in  
21 front of the Court, and see if we can come to an agreement.  
22 And if we can, that would be great. And if we can't, then  
23 maybe we'll have some specific things and we can stick a  
24 document in front of you and you can say take that out, keep  
25 that in.



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1 THE COURT: That seems like a very proper discussion.

2 MR. YALOWITZ: Thanks.

3 MR. ROCHON: It sounds great. We did all that.

4 Except he wasn't involved. It was -- who was it?

5 THE COURT: I don't care. It doesn't matter to me.

6 Make sure you have an understanding of what it is you want out,  
7 and I want an understanding of what it is that you're refusing  
8 to take out.

9 MR. ROCHON: We're happy to have that conversation  
10 with them again.

11 THE COURT: You have to represent to me that you asked  
12 them to take out X and they have refused. Okay?

13 MR. ROCHON: Yes.

14 THE COURT: You put yourself in a position to  
15 represent that, and you should put yourself in a position, if  
16 somebody from your team has reviewed that and they've taken the  
17 position that they will take it out, or they won't take it out.  
18 That's the position that you both should be in, and neither one  
19 of you are in. So until you advance that for me, there is not  
20 much for me to do with it.

21 Take your lunch hour. I suggest you start  
22 concentrating on the presentation of your opening statements  
23 and the witnesses to the jury, rather than this.

24 Look, we've spent days, week, months, trying to  
25 resolve issues so you can move forward efficiently. I'm not

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1 going to spin my wheels resolving issues that should have been  
2 resolved long before this, and now you're telling me on the  
3 first day of trial you that you don't know what direction you  
4 are going to go. Talk to each other. Resolve it. I'll see  
5 everyone in this courtroom at 2 o'clock.

6 MR. YALOWITZ: Thank you.

7 MR. ROCHON: Thank you.

8 (Recess)

9 (Continued on next page)

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AFTERNOON SESSION

2:00 p.m.

(In open court; jury not present)

THE COURT: As we're waiting for all the jurors to arrive, let me ask you if you've agreed on where you disagree.

MR. ROCHON: We've agreed on where we disagree, I think, but we don't agree. We at least have found --

THE COURT: I'm not surprised. What is it that you want out that's not out?

MR. ROCHON: Because I was focusing on the opening, Mr. Satin will address that.

THE COURT: Mr. Satin, what should be out?

MR. SATIN: Last night we received from plaintiffs three separate exhibits of court records that contained the name in unredacted form of Abu Talal. This is the one we discussed over a significant period of time before. So they've given us an unredacted version containing the name Abu Talal which is the name implicated by Munzar Noor when he was convicted. We want those --

THE COURT: In what kind of document?

MR. SATIN: There is an indictment, a sentencing, it looks like a sentencing hearing or explanation, and an appellate opinion, which are separate, just so the Court knows, from the binder of documents that have been sent by the plaintiffs previously of those records of convictions they were

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1 seeking to introduce. This is what we received last night.  
2 That's one issue.

3 THE COURT: Let me address that issue. Mr. Yalowitz,  
4 why isn't their name redacted?

5 MR. YALOWITZ: Your Honor, these are three documents,  
6 I'll tell you they're Exhibit 325, 468, and 478. And I would  
7 like to offer those not for the truth, but for notice of Abu  
8 Talal's name.

9 THE COURT: Notice of name about what?

10 MR. YALOWITZ: That this was an individual who was  
11 publicly implicated as having been the organizer of --

12 THE COURT: What evidence do you have that they were  
13 put on notice by the document that you want to offer?

14 MR. YALOWITZ: My only notice that I'm relying on  
15 would be those documents.

16 THE COURT: How does that put them on notice?

17 MR. YALOWITZ: Because it is a public document and  
18 they are the intelligence service.

19 THE COURT: We've been through this on other  
20 documents. I'm not going to accept your notice argument simply  
21 based on the fact it is a public document.

22 MR. YALOWITZ: I understand.

23 THE COURT: If you have some evidence that they were  
24 provided with a particular document or a particular  
25 information, that's notice.

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1 MR. YALOWITZ: I do not have that evidence.

2 THE COURT: As I say, I don't know what was in The  
3 Wall Street Journal yesterday. So that you can't say that I'm  
4 put on notice of what they claim about any fact that happened  
5 yesterday.

6 MR. YALOWITZ: The only thing I'm going to do is -- I  
7 understand the Court's ruling. We'll move on. If those three  
8 documents are not in the record, I'll just file them as a  
9 proffer.

10 THE COURT: So you're going beyond the redactions. It  
11 is of no use to you with the redaction is the bottom line.

12 MR. YALOWITZ: The only purpose of those documents  
13 would be for notice. Based on the Court's ruling, we won't put  
14 them in front of the jury. I want to make sure they're in the  
15 record.

16 THE COURT: If you have some document that someone  
17 showed this document to somebody at the PA or the PLO so that  
18 they have notice of it. But if it was in The New York Times in  
19 2002 on Sunday, February 1st, doesn't necessarily put them on  
20 notice.

21 MR. YALOWITZ: Okay. I understand the Court's ruling.  
22 I think the Court understands my position on that.

23 THE COURT: I understand. What else?

24 MR. SATIN: The second one, now we're still talking  
25 about a record related to Munzar Noor involving Abu Talal.

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1 This one is Exhibit 322.

2 THE COURT: What kind of a document?

3 MR. SATIN: It is a verdict. And this is the one that  
4 they had sent in redacted form, Abu Talal's name appears three  
5 times.

6 THE COURT: I don't need that much detail. Is it in  
7 an indictment in which the defendant who is pleading guilty is  
8 trying to implicate a third party?

9 MR. SATIN: Yes. So let me be clear about what we're  
10 seeking here. We want not just Abu Talal's name redacted,  
11 which they have agreed to, although they did miss one of them  
12 but they've corrected it.

13 In addition, when Abu Talal was implicated by the  
14 declarant Munzar Noor, he used the name Abu Talal, and his  
15 position, which was a senior --

16 MR. YALOWITZ: What page are we on, Mr. Satin?

17 MR. SATIN: -- a senior operative of the PA's military  
18 intelligence. This is on page two of Exhibit 322.

19 THE COURT: You want his name and his title redacted.

20 MR. SATIN: Correct.

21 THE COURT: Can we do that, Mr. Yalowitz?

22 MR. YALOWITZ: We understood the Court's ruling, and  
23 this is something that is expressed throughout, that the  
24 defendants asked for this. They said we want the  
25 circumstances, the name, their position, all kinds of

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1 identifying information. And as I recall the Court's ruling,  
2 it was the name comes out, and that's what we've done. But the  
3 fact that the individual worked in a certain place.

4 THE COURT: The fact that he's accusing a PA or PLO  
5 employee or agent is the issue. As I say, this is not rocket  
6 science here. If you say "I accuse Mr. Obama," there is not  
7 much difference than saying "I accuse the president of the  
8 United States." All right?

9 So, let's use common sense here. You can understand  
10 why they would have a legitimate objection in that regard. So  
11 the identifying information is the position of the person at  
12 the PA or the PLO. That's an accusation against that  
13 individual. That's an identification of that individual.  
14 That's an accusation against the PA, the PLO. There is an  
15 out-of-court statement of someone you do not intend to bring in  
16 here as a witness to be cross-examined under oath. That  
17 identifying information should also be redacted.

18 MR. YALOWITZ: All right. I'm perfectly willing, your  
19 Honor, to take out the thing they've identified that your Honor  
20 has said is coming out. I think we need to take it document by  
21 document.

22 THE COURT: Well, it should be taken out in every  
23 document. If you want document by document, if it is the name  
24 of the person or the title of the person, it is clearly  
25 identifying an individual, a third person that one would

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1 readily identify that they're accusing then, you should take it  
2 out. As I say, you can't say "I accused the president of the  
3 United States" and nobody knows who you're talking about.

4 MR. YALOWITZ: Well --

5 THE COURT: Just because you didn't say the name  
6 "Obama."

7 MR. YALOWITZ: Look, I don't want to relitigate. I  
8 thought we had a different ruling. We faithfully applied it,  
9 and it was a lot of work. If your Honor is going to do that,  
10 then we'll follow your Honor's ruling.

11 THE COURT: Obviously the rationale for the ruling is  
12 I'm sure very obvious to you and everybody in this courtroom.  
13 So you can understand that, no, it can't just be that I didn't  
14 mention him by name, but I accused this guy who is standing in  
15 front of me at the plaintiffs' table who is arguing the case  
16 for the plaintiff. That's you. Everybody knows it is you. So  
17 you can't do it that way.

18 All right. Anything else before I bring this jury  
19 back in here?

20 MR. SATIN: There are a number of other ones. Do you  
21 want me to go through it now or wait?

22 THE COURT: You can wait. I won't make the jury wait.

23 Mr. Yalowitz, approximately how long do you think  
24 you'll be on opening?

25 MR. YALOWITZ: Slightly less than an hour.



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1 THE COURT: Mr. Rochon?

2 MR. ROCHON: The same.

3 MR. YALOWITZ: One other thing. During opening, I  
4 would like the Court's permission to give the jury copies of a  
5 little cheat sheet card so they can keep track of the attacks.  
6 I think it would be helpful. If I could hand it up.  
7 Mr. Rochon has it. He objects. If I can hand --

8 MR. ROCHON: I might not object.

9 THE COURT: Mr. Yalowitz, let's not fight about it.  
10 Are you going to say yes or no?

11 MR. ROCHON: I thought he was going to give it for the  
12 entire trial. If he wants to use it in opening. The idea that  
13 jurors are walking around with it.

14 THE COURT: You want to utilize this in opening?

15 MR. YALOWITZ: Yes, sir.

16 THE COURT: You'll utilize it in opening. When you  
17 finish with the opening, we can collect it back. If you want  
18 to give it to the jury under some other circumstances, then it  
19 will be done so as an exhibit.

20 MR. ROCHON: I don't mind them keeping them for mine,  
21 as long as they'll have them for his.

22 THE COURT: Then leave them on the seat. That's what  
23 I do with any exhibits they examine when they get up.

24 MR. YALOWITZ: Thank you, your Honor.

25 THE COURT: All our jurors are here. I am going to

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1 bring them in, swear them in, and give them preliminary  
2 instructions and then we'll have opening statements.

3 MR. YALOWITZ: Your Honor, would the Court like a  
4 copy?

5 THE COURT: Sure.

6 I think that podium could be moved a little bit more.

7 MR. ROCHON: It is pretty beholden to an electrical  
8 cord, your Honor.

9 (Jury present)

10 THE COURT: Can we swear in the jurors.

11 (A jury of 12 is sworn)

12 THE COURT: Members of the jury, at this point I'm  
13 required by law to instruct you generally concerning your basic  
14 functions, duties, and certain rules which apply to every jury,  
15 so that you will better be able to assess and weigh the  
16 evidence as it's presented and reach a proper verdict.

17 Now, the trial has commenced with the selection of the  
18 jury. The next step in the trial will be an opening statement  
19 by the parties, if they wish to make an opening statement, to  
20 outline for you what they intend to prove by way of evidence to  
21 be presented in the case.

22 Now, after the plaintiffs' attorney makes his opening  
23 statement, the defendants' attorney, if he desires, may also,  
24 but is not required to, make an opening statement.

25 What counsel for either side says in an opening

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1 statement is not evidence. You may consider it, consider the  
2 opening statements a preview of what each side intends to prove  
3 by way of evidence in the case.

4 After the opening statement or statements, the  
5 plaintiffs' attorneys will present one or more witnesses who  
6 will be questioned by them. This is called direct examination.  
7 After the plaintiffs' attorney completes their questioning of  
8 the particular witness, defendants' attorneys will be given an  
9 opportunity to question the witness. This is called  
10 cross-examination.

11 After the plaintiffs have concluded the calling of  
12 their witnesses and the introduction of any exhibits which are  
13 admissible into evidence, the defendants may, but are not  
14 required to, offer evidence in their own defense.

15 After both sides rest, the defendants' attorney may  
16 make a closing argument followed by the closing argument of the  
17 plaintiffs' attorney. Then I will charge you on the law, and  
18 you will retire to deliberate for the purpose reaching a  
19 verdict. This is a general outline of the trial procedure.

20 You may not take notes during the trial, I ask you to  
21 listen carefully. The court reporter will be taking everything  
22 down. If you want any testimony read back during your  
23 deliberations, we'll have a court reporter read it back to you  
24 verbatim and whatever you may require.

25 The evidence consists of testimony of witnesses under

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oath and exhibits which are admitted into evidence plus any stipulations agreed upon by the attorneys.

Questions in and of themselves are not evidence. Therefore, you cannot infer any fact from the mere asking of a question. It is the answer coupled with the question that constitutes evidence. For example, if a witness was asked a question "Don't you own an automobile?" And the witness answers, "No," you may not infer from the mere asking of the question that the witness does own an automobile.

During the course of the trial, the plaintiffs' attorneys or the defendants' attorneys may object to a question or an answer on the ground that it is somehow legally improper or inadmissible. If I sustained the objection, this means I believe that the question or the answer was in some way improper. If an answer has already been given, I will instruct you to disregard it, and therefore the answer is no longer evidence in the case. If I overrule the objection, then it means that the question is proper, and I will permit it to be answered. Or if already answered, I will permit the answer to remain as evidence in the case.

Please do not resent the fact that either attorney makes objections. This is their duty. And do not hold it against either side if I rule against them.

As I'll explain to you in detail in my instructions at the end of the case, as jurors in this case, you are the sole

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1 judges of the facts, and I am the sole judge of the law. You  
2 must accept the law as I give it to you without hesitation or  
3 reservation, even if you privately disagree with it.

4 You must keep an open mind throughout the trial. You  
5 must not converse among yourselves or with anyone else upon any  
6 subject connected with the trial. You must neither offer nor  
7 express an opinion or reach any conclusion about what the  
8 verdict should be until I finally give the case to you.

9 You must not read or listen to any accounts or  
10 discussions of the case in the event that it is reported by  
11 newspapers or other news media.

12 You must not visit or view any premise or place  
13 described during the trial or any other place or premise  
14 involved in the case.

15 You must not do any research or investigation about  
16 the case on your own. You must decide this case solely on the  
17 evidence presented at this trial.

18 You must not speak to anyone about the case until the  
19 trial is completely ended. You must promptly report to the  
20 Court any incident within your knowledge involving an attempt  
21 by any person to speak with any member of the jury about the  
22 case.

23 During the trial, again, you should not speak with any  
24 of the parties in this case nor any individuals associated with  
25 it. They're instructed not to speak with you. So don't

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1 consider it rude if they see you outside this courtroom and  
2 they don't acknowledge your presence. Obviously, if someone  
3 would see you speaking to one of the parties involved in the  
4 case, they might draw an improper inference, even though it  
5 might be a perfectly innocent conversation unrelated to the  
6 case.

7 As I indicated to you, it is my best estimate at this  
8 point that this case should take approximately six to eight  
9 weeks to present the evidence. I will do my best to keep us on  
10 schedule and even get ahead of schedule and shoot for a goal of  
11 making this six weeks or less, rather than of the goal of  
12 making this eight weeks or more. By the end of this week,  
13 depending upon how much progress we can make this week, I'll  
14 start to get a feeling for where I think we are and what else I  
15 think is anticipated in this case to be presented to you and  
16 how long it might take. As I say, I will keep you continuously  
17 informed about what the schedule will be, and whether I think  
18 we are ahead of schedule, behind schedule, or on schedule.

19 As I indicated, we will have some holidays in between  
20 that I will honor, so I'll give you an opportunity to make your  
21 own personal and professional plans around those holidays.

22 With those preliminary instructions, at this point  
23 we'll now proceed with the next step in the trial which will be  
24 an opening statement by the plaintiff. Mr. Yalowitz.

25 MR. YALOWITZ: Thank you so much, your Honor.

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Opening - Mr. Yalowitz

1 March 21, 2002, was cold and rainy in Jerusalem. Alan  
2 Bauer took his oldest child, seven-year-old Yoni, to the doctor  
3 and then stopped by the office. A little after four, Alan took  
4 Yoni by the hand and headed for home. Their walk took them  
5 through a busy downtown neighborhood. They walked down Jaffa  
6 Road, one of the busiest streets in Jerusalem, and they turned  
7 left on to King George Street.

8 In the meantime, a Palestinian ex-cop by the name of  
9 Muhammad Hashaika had snuck into Jerusalem. Hashaika had a  
10 bomb hidden under his clothing. The bomb had powerful  
11 explosives in it and homemade shrapnel, a bag of Phillips head  
12 screws.

13 A woman led Hashaika to King George Street. She told  
14 him, "Allah will show you favor. Allah willing, you will  
15 reside in paradise."

16 Hashaika went up behind Alan and Yoni and set off the  
17 bomb, killing himself instantly. The blast hit Alan from  
18 behind, threw him to the ground. He had just been holding his  
19 seven year old by the hand. Now Yoni was missing.

20 The scene was chaotic, filled with smoke and fog.  
21 Three people were dead. 81 wounded.

22 Alan ran back and found Yoni. He was on the ground  
23 gurgling. Minutes passed. They got Yoni into an ambulance.  
24 The paramedics checked his arms, his legs, his torso. They  
25 couldn't see what was wrong. Then they took a towel out from

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Opening - Mr. Yalowitz

1 behind the back of his head, and the towel was soaked in blood.  
2 Suddenly, Alan realized what had happened. Something had  
3 penetrated his little boy's brain.

4 Now, Yoni survived, but his life is not the life you  
5 would wish for your child. He can walk, but he can't walk the  
6 way you and I can walk. He can talk, but he can't talk the way  
7 you and I talk. He can use his arms, but not the way we can.

8 Ladies and gentlemen, my name is Kent Yalowitz. I  
9 have the privilege of representing the Bauer family and nine  
10 other American families who survived terror attacks in  
11 Jerusalem, Israel. My colleagues will help me try this case,  
12 Tal Machnes, Phil Horton, Carmela Romeo, Sara Pildis, Rachel  
13 Weiser. We'll be together over the coming weeks, and we will  
14 prove to you that the defendants, the Palestine Liberation  
15 Organization and the Palestinian Authority, bear the  
16 responsibility for six brutal attacks.

17 With the Court's permission, I am going to hand you a  
18 summary which we also see up on the screen, of these attacks.

19 May I, your Honor?

20 THE COURT: Yes.

21 MR. YALOWITZ: Thank you so much. If you can just  
22 pass them around, that would be great. Thank you.

23 The evidence will show that killing civilians was  
24 standard operating procedure for the Palestine Liberation  
25 Organization and the Palestinian Authority. We will ask you at



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Opening - Mr. Yalowitz

1 the end of the trial to award money damages for economic  
2 losses, physical injuries, emotional losses, pain, suffering,  
3 and the loss of a loved one. We will ask you to award these  
4 damages under the Anti-terrorism Act which allows Americans,  
5 United States citizens, who have been injured by terrorism  
6 anywhere in the world, to recover money damages in a United  
7 States court of law.

8 I want to begin by telling you about the families who  
9 have come to court today seeking justice. I already told you  
10 about the Bauer family. That's Alan, circled in red. He is  
11 the one who had his little boy by the hand. Yoni, also circled  
12 in red, was seven at the time of the attack 12 years ago. Mom,  
13 Revital Bauer, and three younger children who will not be  
14 testifying, but who are plaintiffs in this case.

15 Next I want to tell you about Shayna Gould. Shayna's  
16 circled in red there down at the bottom of the picture of her  
17 family. Shayna was 19, studying abroad for a year in Israel.  
18 She was waiting at a bus stop when a Palestinian Authority  
19 police officer with an M-16 assault rifle shot her in the  
20 chest. She bled out.

21 By the time she got to the hospital, she was listed as  
22 dead on arrival, but a doctor saved her life by breaking open  
23 her rib cage and giving her cardiac massage.

24 Her family back in Chicago received a call to come  
25 urgently. Get on a plane and come urgently, because she might

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Opening - Mr. Yalowitz

1 not survive the night. They raced to Israel, and when they got  
2 there, the doctors told them "She's alive, she's in a coma, and  
3 when she comes out of it, we don't know if you're going to get  
4 the same girl back."

5 She lost a lung, she had severe damage to three ribs,  
6 she has severe scarring, she has severe physical pain to this  
7 day, and she has even worse emotional pain.

8 Let me tell you about the Waldman family. Shmuel  
9 Waldman was on that same street that same day. Shmuel and his  
10 wife Henna are here in the courtroom.

11 Stand up, Shmuel and Henna. Thank you so much.

12 Shmuel and Henna were young newlyweds. Shmuel was 20  
13 that terrible day. He was on his way home from work, waiting  
14 on a bus to meet his beautiful wife. He heard the scream  
15 "Allahu akbar" and then he got shot in the leg. He prepared  
16 himself for death and he thought he was going to die, but he  
17 didn't die. Instead began a 13-year nightmare for this man.  
18 Terrible leg injuries, multiple leg surgeries, terrible  
19 emotional, disabling emotional injuries. He lost his business.

20 Let me tell you about the Sokolow family. The Sokolow  
21 family are here, too. Mark, Rena, stand up, Mark and Rena.  
22 Elana, Jamie, Lauren. I think Jamie and Lauren are here.  
23 Stand up if you're here. Jamie, Lauren, Elana.

24 The Sokolow family was visiting Elana. She was  
25 studying abroad in Israel. The family decided to take a trip

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Opening - Mr. Yalowitz

1 to see her. They were in Jerusalem on that same busy downtown  
2 shopping street, Jaffa Road, when a terrorist set off a bomb  
3 and blew herself up behind them. Rena, Jamie, Lauren, Mark,  
4 they were all wounded. They all had shrapnel. They were  
5 separated by blast. They went to three different hospitals,  
6 each one not knowing whether the other ones were alive or dead.  
7 Not knowing if any one in the family was okay. Jamie was 12  
8 years old. Rena actually saw the head of the suicide  
9 terrorist. She had horrible damage to her leg.

10 Let me tell you about the Mandelkorn family. Shaul,  
11 Leonard, Nurit. Shaul was 18, he had been away on a school  
12 trip for a weekend. He was taking a bus home, and he got off  
13 the bus, and he walked into the path of a suicide bomber. He  
14 had shrapnel over a lot of his body. He had horrific pain. He  
15 was in the hospital for more than a month, and his parents bore  
16 a heavy, heavy burden of caring for this young boy. And they  
17 still bear that burden, because he was destroyed by emotional  
18 injuries.

19 This is the Goldberg family. They were a beautiful,  
20 close-knit family. They did everything together, they sang  
21 together, they went everywhere together. Even family chores  
22 were a fun game for these kids when their dad was around.  
23 Scotty Goldberg was the glue that held this family together.

24 On the morning of January 29, 2004, Scotty didn't take  
25 his usual bus to work. No one knows why. He wound up on a

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Opening - Mr. Yalowitz

1 different bus, and he never made it to work that day. The bus  
2 he was on was blown up by a PA police officer. He left a widow  
3 and seven children. The oldest child, Chana, was only 16. The  
4 youngest was a baby. This family's lives were torn apart.  
5 You're going to meet them, other than the younger kids. And  
6 you're going to see they're still trying to pick up the pieces.

7 Ben Blutstein was in his early 20s. He was studying  
8 abroad. He was in Israel to study to become an educator. On  
9 the Sunday before he died, he called his parents. He told his  
10 mother, "I am the happiest I have ever been. I finally know  
11 what my place is in life." He was supposed to take a test  
12 Wednesday for his school and then come home that evening.

13 He stopped off for lunch at the Frank Sinatra  
14 cafeteria at Hebrew University, sat down at a table for lunch,  
15 and that was his last meal. He never even made it to the test.  
16 A hidden bomb ripped through that cafeteria and killed Ben and  
17 eight others.

18 This is Diane and Larry Carter. Larry is a  
19 veterinarian from North Carolina. His daughter Diane had left  
20 home and she had cut off contact with the family. Her dad  
21 hoped and prayed for a reunion. He loved that daughter. And  
22 the day he found out that she had been killed by a terrorist  
23 bomb, that day his hope died too.

24 Here is the Coulter family. Janis Coulter lived in  
25 Brooklyn. She worked in Manhattan for a study abroad program.

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Opening - Mr. Yalowitz

1 She was the apple of her dad's eye. She was her sister's best  
2 friend. Her boss got sick, and she had to substitute in for a  
3 three-day business trip. She was one of the Americans killed  
4 at the Frank Sinatra cafeteria that day. Her dad turned on the  
5 news that morning and he saw her beautiful hair spilling out of  
6 a body bag on television. The family had to travel down from  
7 Massachusetts to J.F.K. Airport to pick up Janis's body in a  
8 cardboard box.

9 Here's David Gritz. David's parents also learned  
10 about it from the morning news. They were in New York, too,  
11 staying with friends. They tried desperately to call David, he  
12 didn't answer his phone. He was a beautiful soul. He was  
13 musical, he was philosophical, he became interested in religion  
14 although he hadn't had much when he was young, either from his  
15 mom or from his dad. His mom was Catholic, his dad was Jewish.  
16 Israel was interesting to him because he was trying to learn  
17 about religion. He went to Jerusalem to study for a year.

18 The day he died, his parents spent the whole day in  
19 New York waiting, calling the authorities, trying to get  
20 information.

21 His dad passed a couple years later. Now his mom  
22 Nevenka is alone in the world. Before David died, she had  
23 never been to Jerusalem. Now she goes there as often as she  
24 can because she wants to walk where her son walked.

25 Now I want talk to you about who perpetrated these

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Opening - Mr. Yalowitz

1 violent crimes. I want to start with the group that attacked  
2 Alan and seven-year-old Yoni that cold day in March 2002. The  
3 evidence will show that the suicide bomber who attacked Alan  
4 and Yoni did not act alone. It turns out that he was a -- bear  
5 with me. I think -- well, I'll show you the cell anyway.

6 It turns out he was assisted by a whole group of  
7 people. You can see a picture of Muhammad Hashaika, the  
8 suicide bomber down there at the bottom. I am going to prove  
9 to you that all of these individuals had a role in his suicide  
10 attack.

11 It turns out that Hashaika was a known and  
12 specifically identified threat. Five weeks before he attacked  
13 Alan and Yoni, the Palestinian Authority itself arrested him  
14 because he was planning a suicide attack.

15 Some of you may have heard of the Palestinian  
16 Authority. Sometimes we're going to call it the PA for short.  
17 It is the local government in the Gaza Strip and West Bank.  
18 Let me show you a map. The West Bank and the Gaza Strip are  
19 these brown areas. At the time of the events, they were the  
20 local government in these two areas. It was created, the  
21 Palestinian Authority was created by the Palestine Liberation  
22 Organization, sometimes called the PLO. The PLO is a political  
23 entity that represents the Palestinian people. The evidence  
24 will show that the PLO is in charge of the PA.

25 So, the PA, the Palestinian Authority, provided local

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Opening - Mr. Yalowitz

1 government services, including police and security services.

2 The Palestinian Authority had a local police force, it had a  
3 presidential guard, it had an intelligence service, it even had  
4 a preventive security service. They were armed.

5 Now let me show you some more about the terror group  
6 that planned and executed the bombing of Alan and Yoni. Up at  
7 the top, you see a Palestinian Authority officer named Abdel  
8 Karim Aweis. He's at the top right. Next to Aweis you see a  
9 little eagle emblem. I put that there, because I'm going to  
10 prove to you that he was an employee of the Palestinian  
11 Authority. That little eagle is a symbol that the Palestinian  
12 Authority uses on their documents. It is like their little  
13 shield. I put it there because that will help you remember  
14 that I'm going to show you that he was a Palestinian Authority  
15 employee.

16 I already mentioned down at the bottom you see  
17 Muhammad Hashaika. He was the suicide bomber. Now, Aweis, the  
18 evidence will show, up at the top, got Hashaika released from  
19 jail, and teamed up with the fellow at the top on the left  
20 named Nasser Shawish to plan the attack. The terror group also  
21 included two women who snuck Hashaika into Jerusalem past all  
22 those security points. You see them there in the middle of the  
23 chart.

24 The evidence will show that these people got help from  
25 a man named Toufik Tirawi. You'll hear a lot about Tirawi. He

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Opening - Mr. Yalowitz

1 was the head of the intelligence service where Aweis worked.  
2 In other words, the evidence will show that he was one of the  
3 top officials for the defendant Palestinian Authority. We're  
4 going to show you that he provided support for this terror  
5 group.

6 Tirawi's direct boss was Yassir Arafat. Some of you  
7 may have heard of Arafat. He was chairman of the PLO for  
8 decades. He was president of the Palestinian Authority from  
9 the day it was created to the day he died.

10 The evidence will show that Arafat was the epitome of  
11 one-man rule. You'll hear testimony and see documents showing  
12 that he controlled the money. Indeed, all of the PLO's money  
13 came from the Palestinian Authority. For all intents and  
14 purposes, the evidence will show, the PLO and the PA were one.

15 Now, I want to give you an example of Arafat's  
16 personal control. It is Exhibit 1060. It is in the original  
17 Arabic and came from the files of the Palestinian Authority.  
18 It is from Tirawi, the fellow I just mentioned, the head of the  
19 PA's general intelligence service. You'll see his signature  
20 down there at the bottom. It is addressed to Yassir Arafat.

21 We've translated it to show how they addressed Arafat.  
22 "His excellency, brother, president and general commander, may  
23 Allah protect him." That's Yassir Arafat, the evidence will  
24 show.

25 Now, we've translated the document to show that



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Opening - Mr. Yalowitz

1 Hashaika is specifically discussed as a suicide terrorist.  
2 Here we see that Arafat was personally informed of the arrest,  
3 and we see at the bottom Tirawi writes to Arafat, "the matter  
4 is at your excellency's discretion." Five weeks later,  
5 Hashaika was out of jail with a bomb strapped around his body.

6 Now, the PA and the PLO never provided us with a  
7 direct order from Arafat saying release Hashaika. Arafat  
8 didn't work that way. Such was his control that a simple,  
9 quiet nod of the head was enough. You won't see anything else.

10 Let me tell you about the other six attacks -- excuse  
11 me, the other five attacks. You see them on your chart.  
12 January 22, 2002, was the attack against Shmuel Waldman and  
13 Shayna Gould. The evidence will show that they were shot by  
14 the man at the bottom, Said Ramadan. There you see him with  
15 his M-16 rifle. He was a PA police officer. This group had  
16 six Palestinian Authority security officials. I put the little  
17 eagle emblems to show you which ones were PA employees.

18 You see the same pattern as in the attack on the Bauer  
19 family. Commanders, someone who recruited the suicide  
20 terrorists, people who prepared him, videotaped him reading his  
21 suicide will, people who transported him to the scene. These  
22 people were convicted of murder. And after they were  
23 convicted, the Palestinian Authority either kept them on the  
24 payroll while they're in jail, or they went on the payroll  
25 after they were arrested.

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Opening - Mr. Yalowitz

1 I want to make sure you understand that. These are  
2 people convicted of murder, and they are still on the payroll  
3 today.

4 As for Ramadan, the shooter, he died committing his  
5 crimes, and the Palestinian Authority and the PLO declared him  
6 an Al Aqsa martyr. Al Aqsa is the name of a mosque in  
7 Jerusalem which the Palestinian Authority co-opted as a symbol  
8 of the terror campaign. Ramadan's family gets money every  
9 single month from the PLO because he died as a suicide  
10 terrorist.

11 Five days after Ramadan committed his crime, a bomber  
12 named Wafa Idris blew herself up behind Mark Sokolow and his  
13 family. The evidence will show that an official of the PA's  
14 intelligence apparatus recruited Idris as a confidential  
15 informant. In fact, you will personally see a document from  
16 the Palestinian Authority's own files showing that intelligence  
17 head Tirawi, the same fellow we just talked about, had advance  
18 knowledge of the attack before it became public.

19 As for the suicide bomber, she was declared an Al Aqsa  
20 martyr. Her family gets money every month from the PLO because  
21 she died as a suicide terrorist.

22 Let's go to January 29, 2004. Scott Goldberg was  
23 riding a bus to work. That bus he wasn't supposed to be on.  
24 And a PA police officer named Ali Ja'ara blew himself up  
25 murdering Scott and 10 others. This group had four PA security

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Opening - Mr. Yalowitz

1 officials. You see the same pattern again. A commander of the  
2 cell, someone who recruited the suicide terrorist, people who  
3 prepared him, people who transported him past the checkpoints  
4 in Israel. These people were convicted of murder, and they  
5 either stayed on the payroll as police and security officers  
6 even while they sit in jail, or they went on the payroll after  
7 they were arrested.

8 As for Ja'ara himself, he had been fired a couple of  
9 weeks before he blew himself up. After he died, the police  
10 department reinstated him as a member of the force in good  
11 standing. He was declared an Al Aqsa martyr officially. His  
12 family gets money every month because he died as a suicide  
13 terrorist. And eventually, he was even given a full dress  
14 state funeral by the Palestinian Authority.

15 So we see in these attacks a pattern in which groups  
16 of PA employees band together to organize terror attacks. The  
17 organizers get caught, they get arrested, they get tried,  
18 convicted, sentenced, put in jail, and then they're rewarded by  
19 the Palestinian Authority with pay and with promotions and with  
20 glorification. The families of the suicide terrorists get  
21 money from the PLO.

22 Now, I want to talk a little bit about what is  
23 terrorism. Judge Daniels will direct you on the law, but your  
24 common sense tells you that terrorism is different from random  
25 street crime. The evidence will show that these terror attacks

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Opening - Mr. Yalowitz

1 were violent and dangerous crimes with the apparent purpose of  
2 intimidating and coercing the population of Israel, and  
3 influencing the government of Israel and even influencing the  
4 government of the United States of America.

5 If you want to intimidate a civilian population,  
6 killing randomly selected civilians can be pretty effective.  
7 The evidence will show that this killing was indeed random.  
8 Christians and Jews, Israelis, Americans, people from all over  
9 the world.

10 Now, I want to start to tell you a little bit more  
11 about how we're going to prove the things that I've told you.  
12 You're going to see documents. You're going to see personally  
13 the convictions for murder and attempted murder. These are  
14 people who are convicted of their crimes in the Israeli  
15 criminal justice system, they went to jail, and some of them  
16 are still in jail. While they sit in jail, performing no  
17 services whatsoever, they draw a generous salary from the  
18 Palestinian Authority. You are personally going to be able to  
19 look at those payroll records. You'll see promotion records  
20 for employee convicts people who are promoted in rank while  
21 they're in jail.

22 These records will prove that even after these people  
23 are convicted of murder, the Palestinian Authority keeps them  
24 on as security employees. It celebrates their crimes as having  
25 been as a result of their fight for their country. The

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Opening - Mr. Yalowitz

1 Palestinian Authority did this over and over and over again.  
2 Keeping convicted murderers on the payroll, promoting convicted  
3 murderers while they sit in jail, glorifying the murders in  
4 Palestinian press.

5 Not only that, when people who are not employees were  
6 convicted of terror crimes, the Palestinian Authority actually  
7 went ahead and put them on the payroll. You'll see those  
8 records too. Showing the terrorists got put on the payroll  
9 when they were arrested, and stayed on the payroll after they  
10 were convicted.

11 Now, these employees were not rogue employees. As I  
12 said, this was standard operating procedure. And I'm going to  
13 bring you three forms of evidence that will show you how deeply  
14 the Palestinian Authority embraced these crimes.

15 Official policies, widespread practices, number one.  
16 Number two, evidence of material support. And number three,  
17 the defendants' own words from their own official intelligence  
18 documents, from their own official prisoner ministry records,  
19 from their own official publications, from their own top  
20 leadership.

21 Let's first start with reason number one, official  
22 policies and widespread practices. You'll see evidence that  
23 the PLO has something called the Martyrs Institute. The  
24 Martyrs Institute pays families of suicide terrorists. They  
25 pay every month to the family of every suicide bomber. They do

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Opening - Mr. Yalowitz

1 this as a matter of official policy.

2 You'll also see and hear about a Palestinian Authority  
3 law that provides for money for anyone who is convicted of a  
4 terror crime against an Israeli. In other words, as a matter  
5 of law and policy, anyone who is convicted of murder for  
6 political purposes gets paid.

7 You'll see evidence and hear evidence that the  
8 Palestinian Authority has a whole ministry of prisoners to  
9 serve the needs of these convicts, providing them legal  
10 assistance, making solidarity visits to their families, even  
11 negotiating for their release.

12 Now, I want to show you one thing about the law, the  
13 Palestinian Authority law that is especially important. And  
14 that's their definition of a prisoner. A prisoner is somebody  
15 who is qualified to get that money. And here's how they define  
16 prisoner. "Anyone who is kept in the prisons of the occupation  
17 for offenses of participating in the struggle against the  
18 occupation."

19 Now, this definition has an important phrase that I  
20 want to speak about candidly. "The struggle against the  
21 occupation." What is the occupation? There is a political  
22 conflict in Israel. As I said before, during the relevant  
23 years, Israel and the Palestinian Authority divided  
24 responsibility for governing in the West Bank and the Gaza  
25 Strip. Some people were against the Palestinian Authority

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Opening - Mr. Yalowitz

1 gaining additional power, and others believed that the  
2 Palestinian people should have their own country immediately.  
3 One word that people with that perspective used for the shared  
4 power arrangement was "occupation." And you will see and hear  
5 the PLO and the PA documents and maybe witnesses, if they bring  
6 any, talking about the struggle against the occupation or  
7 resistance of the occupation.

8 Now, think about what that means in the context of  
9 this prisoners law. They refer to someone who is in jail for  
10 murdering civilians as a person who was participating in the  
11 struggle against the occupation and therefore worthy of getting  
12 paid money every month while they sit in jail.

13 I want to be very clear. Great minds might disagree  
14 about the political issues between these peoples. That's not  
15 what this case is about. It is not about who is right and who  
16 is wrong in that debate.

17 The plaintiffs in this case are 10 innocent American  
18 families. Not the government of Israel. What was  
19 seven-year-old Yoni Bauer's crime. What did he do wrong? He  
20 was walking with his dad home from work. Did Scotty Goldberg  
21 do something wrong by getting on that bus? Shayna and Shmuel  
22 and Shaul. All they were doing was getting on and off buses,  
23 just like you and I do. The Sokolow family was buying shoes  
24 for their 12-year-old daughter. Four Americans in the Frank  
25 Sinatra cafeteria were sitting down to lunch.

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Opening - Mr. Yalowitz

1           This case is not about whose land it is. This case is  
2 about the consequences of murdering and maiming innocent  
3 civilians to achieve a political objective.

4           No matter what your political beliefs, killing  
5 innocent civilians is morally unacceptable. No matter what  
6 your political beliefs, shooting young people with an M-16  
7 assault rifle on a busy downtown shopping street is morally  
8 unacceptable. No matter what your political beliefs, making a  
9 homemade bomb out of homemade explosives and a bag of Phillips  
10 head screws and sending people on suicide missions is morally  
11 unacceptable.

12           You're also going to see evidence of widespread  
13 practices supporting terror. You will see evidence that Yassir  
14 Arafat and top PA and PLO officials used PA money to finance  
15 terrorism. Time and time again, the evidence will show, Arafat  
16 and other PA and PLO officials approved and directed payments  
17 to people engaged in terrorism, knowing that this was what  
18 these terrorists were up to.

19           You will see convictions of top and midlevel officials  
20 for this conduct. You will see documents from the Palestinian  
21 Authority showing the funding of terrorists, and the knowledge  
22 of the Palestinian Authority intelligence apparatus about these  
23 terror operations. You will see government reports from the  
24 United States government and from the government of Israel  
25 detailing the terror financing operations, and you will hear



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Opening - Mr. Yalowitz

1 personally from experts in the Palestinian arena who have spent  
2 their careers fighting terror. They will help you understand  
3 these documents.

4 You will also see evidence that the Palestinian  
5 Authority and the PLO did their best to control the supply of  
6 weapons in the West Bank and the Gaza Strip, and then they used  
7 those weapons to support terror operations.

8 The evidence here again will include convictions and  
9 confessions and expert analysis. You'll also see evidence  
10 about a revolving door of the Palestinian Authority's own  
11 prison system. In fact, the release of Hashaika, the ex-cop  
12 who blew himself up behind Alan and Yoni, was not an isolated  
13 event. You'll see evidence that the PA released other  
14 terrorists from prison, and that they failed to arrest known  
15 terrorists, even when those known terrorists were on their own  
16 payroll and worked as their own employees.

17 You'll also see and hear evidence that engaging in  
18 terror attacks was common for security employees of the  
19 Palestinian Authority security apparatus. The defendants' own  
20 websites reveal hundreds of their security employees are in  
21 jail for those "struggle against the occupation" crimes.

22 Let me turn to the evidence on reason number two, the  
23 evidence of material support. The evidence here will show that  
24 there were several terror groups operating in Israel at that  
25 time, including one called the Al Aqsa Martyr Brigades named

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Opening - Mr. Yalowitz

1 after that mosque Al Aqsa, and another called Hamas. These  
2 were terror groups that were designated by the United States  
3 government as designated foreign terrorist organizations.  
4 Hamas got that designation in the 1990s, and the Al Aqsa Martyr  
5 Brigades was officially designated on March 25, 2002, three  
6 days after the attack on Alan and Yoni for which that  
7 organization took credit.

8 We're going to bring you evidence that the PA closely  
9 supported the Al Aqsa Martyr Brigades, both before and after  
10 its designation, with weapons and money and freedom to operate  
11 within territory patrolled by the Palestinian Authority's own  
12 security forces.

13 We'll show that you Al Aqsa Martyr Brigade was just  
14 another name for a thing called Fatah, which was controlled and  
15 dominated by Yasser Arafat.

16 (Continued on next page)  
17  
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19  
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F1D8SOK3

Opening - Mr. Yalowitz

1 MR. YALOWITZ: And financed by the Palestinian  
2 Authority.

3 We will show you that two of the attacks in this case  
4 were carried out by the Al Aqsa Martyr Brigades after the  
5 designation. One of them took place on June 19, 2002 at French  
6 Hill, killing seven, wounding 39, including Mandelkorn. The  
7 other one, the bus attack that took the life of Scotty  
8 Goldberg, January 29, 2004.

9 We will also bring you evidence that the PA and PLO  
10 officials provided support to Hamas in the form of freedom to  
11 operate, bomb-making equipment, communications equipment.

12 The evidence will show that the PA arrested a  
13 notorious bomb maker named Abdullah Barghouti, but released him  
14 only three weeks later. PA employees let him keep his  
15 bomb-making equipment and took him to a safe house.

16 Then Abdullah Barghouti went on a killing spree. He  
17 was not caught by the Israeli authorities until his bombs had  
18 murdered 66 innocent civilians.

19 After he was caught, he openly confessed his crimes.  
20 He pled guilty. At his sentencing he told the court: I do not  
21 regret any of the acts that I have carried out.

22 One of his bombings was the Frank Sinatra cafeteria,  
23 Hebrew University, July 31, 2002. That bomb killed nine and  
24 wounded 81. Four of my client families lost a child or a  
25 sibling that day.

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Opening - Mr. Yalowitz

1 Now, let me take you to reason number 3. The  
2 defendants' own words.

3 You are going to see the defendants' intelligence  
4 files, their prisoner ministry files, their martyr files.  
5 Those files are filled with words of praise for the murderers.  
6 I want to just give you one example. That's Ahmed Barghouti.

7 Ahmed Barghouti organized the January 22 attack on  
8 Jaffa Road in downtown Jerusalem. You see him up there on the  
9 right at the top. That's the one in which Said Ramadan used an  
10 M-16 assault rifle to shoot Shayna Gould in the chest and  
11 Shmuel Waldman in the leg.

12 Ahmed Barghouti is also the one who took that Hamas  
13 bomb maker, the one who bombed the Frank Sinatra cafeteria, to  
14 a safe house.

15 In a criminal proceeding in Israel Barghouti was  
16 convicted following a guilty plea of murder and attempted  
17 murder for his role in those attacks. Immediately before he  
18 was sentenced for his crimes, Barghouti said: I have no  
19 regrets.

20 Now, the PA has intelligence files on Barghouti and  
21 the other convicted murderers I have shown you.

22 One report on Barghouti says this. It says he was  
23 arrested by the Israeli Occupation Forces and was sentenced to  
24 15 life terms plus 50 years. He is currently serving his  
25 prison sentence in the Al-Naqab prison. He is good in terms of

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Opening - Mr. Yalowitz

1 security and morals.

2 Good in terms of security and morals. Consistent with  
3 those words, the PA has kept Barghouti on their payroll and  
4 they have promoted him through the ranks of their officers  
5 three times since his arrest and conviction.

6 You will also see police magazines. The PA has  
7 something called the Institute for Political Guidance. We  
8 don't have anything like it here in the United States. The  
9 evidence will show that this institute puts out monthly  
10 magazines that it uses to educate the police forces. The  
11 magazines are called things like The Police or The Martyrs.

12 The education that these magazines provide to the  
13 police is incitement. You will see evidence of these magazines  
14 telling PA police officers to engage in violence, either  
15 directly or indirectly.

16 This is the PA's and the PLO's official political  
17 guidance to their armed security officers.

18 Now, I have told you about some of the documents you  
19 are going to see in this case -- convictions, confessions,  
20 payroll records, promotion records, ministry of prisoner  
21 records, martyr files, intelligence files, police magazines,  
22 statements of senior PLO and PA officials, government reports.

23 You are also going to hear from witnesses. One thing  
24 I want you to watch out for is which witnesses the defendant  
25 brings. Watch and see who they bring and who does not show up

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Opening - Mr. Yalowitz

1 for the PA and the PLO.

2 Here is who we will bring. We are going to bring you  
3 eyewitnesses who will tell you what they saw and heard.

4 We are going to bring you experts, people who have  
5 spent a career working in their fields.

6 You are going to meet intelligence agents who spent a  
7 career fighting terror. You are going to meet practicing  
8 lawyers, psychiatrists, rehab doctors, accountants who will  
9 help you with damages, experts who will help you understand the  
10 evidence.

11 And you will meet the families. These families can be  
12 very emotional. Some of them have trouble expressing their  
13 emotions, and I want you to understand that. When you lose a  
14 piece of your own body to terrorists or, God forbid, a child,  
15 something terrible happens to you and you can't always express  
16 it. Terrorism tore these families apart, not just physically  
17 but in many cases emotionally.

18 Of course, you will see the physical scars that some  
19 of the survivors carry. You will hear about the physical pain  
20 that some of the survivors bear. But you and I have lived long  
21 enough to understand that sometimes the worst scars we carry  
22 are the scars that no one can see.

23 You will hear about emotional losses that so many of  
24 these families have suffered. You will hear how these acts of  
25 terror ripped apart these families' lives. You will hear from

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Opening - Mr. Yalowitz

1 the survivors. But I also want to take a moment with you to  
2 think about those who did not survive and what they meant to  
3 the loved ones who they left behind.

4 (Photographs shown)

5 Ladies and gentlemen, your Honor, thank you.

6 THE COURT: Ladies and gentlemen I am going to give  
7 you a ten-minute break.

8 Don't discuss the case. Keep an open mind. We will  
9 proceed in ten minutes.

10 (Jury exits courtroom)

11 THE COURT: We will continue in ten.

12 MR. ROCHON: I have some matters to address about the  
13 opening. I did not want to object during Mr. Yalowitz's  
14 opening. I could do it now or after the break.

15 THE COURT: What do you prefer?

16 MR. ROCHON: I know you prefer me to do neither, but  
17 whatever you prefer. I can tell you what they are.

18 THE COURT: Sure.

19 MR. ROCHON: Number one, I am concerned that after all  
20 the promises about trying to keep the occupation, all the  
21 political rhetoric out of the case, that it's being injected in  
22 the opening and some of the evidentiary rulings. I have been  
23 clear, I have been saying we are not going to do that, and I  
24 think it was directly implicated by the opening.

25 I can list them all and then have the Court's comment.

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1           Number two, there was reference to evidence that you  
2           have ruled inadmissible, the bomb-making materials that were  
3           supposedly left in Abdullah Barghouti's apartment that have  
4           always not been allowed in and your recent enunciation on that  
5           was yesterday.

6           The testimony about the nature of the release of  
7           Abdullah, the hearsay on that, was also restricted because it  
8           was in the nature of implicating others.

9           So, your Honor, I think that the arguments -- finally,  
10          he said that Ahmed Barghouti was convicted in the Hebrew  
11          University bombing. He was not. That's a PA employee. There  
12          is no other PA employee. There is no PA employee convicted in  
13          that. And in his opening statement he just told the jury Ahmed  
14          Barghouti was convicted of those attacks. That's not so.

15          I want to use a pejorative. I am obviously extremely  
16          upset about it, but there is no excuse for that. They know he  
17          wasn't convicted. He just said he was convicted. That is a PA  
18          employee in the four person, dead person, saddest case, worst  
19          case in this case, as you pointed out. He just said that my  
20          client was convicted of it. That was inaccurate at best.

21          I would ask for a mistrial. I'm sorry. This  
22          obviously is a very moving opening, a very well-presented  
23          opening, a very emotional case. That is one of the most  
24          emotional incidents, and he just falsely told the jury that an  
25          employee of my client was convicted.



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1 THE COURT: I am not going to grant your application  
2 for a mistrial at this point in time. We had simply the first  
3 party's opening statement. I will let you give an opening  
4 statement and then I will consider the presentation of the  
5 evidence, and to the extent that the evidence is inconsistent  
6 with the opening statement, I am sure you will have an  
7 opportunity to point out that he made promises that he could  
8 not keep. To the extent that some other sanction, either  
9 evidentiary sanction, becomes appropriate or a basis for a  
10 mistrial becomes appropriate, I will consider that at that  
11 point in time.

12 The first thing I have already done and I have already  
13 emphasized to the jury is that what the lawyers say is not  
14 evidence, and I will emphasize that again. There is a basic  
15 principle of trying a case. Promises made, promises kept.  
16 Promises made, promises not kept. So I will be very careful  
17 and watchful as to whether or not there is some other evidence.

18 I have to characterize it slightly different than how  
19 you characterized it. I did not rule that the evidence was  
20 inadmissible. I ruled that the evidence he was going to offer  
21 to prove that point was not admissible.

22 Now, whether or not he has some other evidence that he  
23 intends to present during this trial to support that statement,  
24 that is to be seen. But if an appropriate sanction needs to be  
25 imposed during the trial or an ultimate sanction of mistrial, I

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1 will consider it at the appropriate time. But at this point in  
2 time I think it is appropriate for you to make your opening  
3 statement and for us to see what in fact is the evidence or  
4 lack of evidence that's presented to the jury and see whether  
5 or not that in and of itself is a basis for the jury to render  
6 a fair and just verdict.

7 MR. ROCHON: Yes, sir.

8 THE COURT: We will take a short break.

9 (Recess)

10 THE COURT: Mr. Rochon, are you ready to go?

11 MR. ROCHON: Yes, I am.

12 THE COURT: Then let's bring in the jury.

13 (Jury present)

14 THE COURT: Mr. Rochon, would you like to make an  
15 opening statement?

16 MR. ROCHON: Yes, sir.

17 May it please the court.

18 Ladies and gentlemen, my name is Mark Rochon. I am a  
19 lawyer. I am a lawyer from Washington, D.C., and I stand  
20 before you today on behalf of the Palestine Liberation  
21 Organization and the Palestinian National Authority, which is  
22 sometimes called the PA. I am grateful for the opportunity to  
23 represent them.

24 I hope that I do them justice during this case.

25 I know you will do justice in this case even if I fall

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Opening - Mr. Rochon

1 short.

2 I hope I bring to you in this opening statement the  
3 additional evidence you haven't heard yet that will give you  
4 the full context of what happened here. But let me first tell  
5 you first of all what we can all agree on.

6 These acts happened. There is no dispute of that.  
7 These acts were horrific. We are not defending those acts.  
8 Those acts are condemnable, they were wrong, intolerable. We  
9 are not defending these acts as a proper part of resistance  
10 against an occupation or a struggle or any of that political  
11 stuff that you were just hearing about.

12 Ladies and gentlemen, this case is also not about that  
13 occupation that you just heard about from Mr. Yalowitz. Yes,  
14 there are extremely strong feelings on both sides. Yes, a lot  
15 of things could be said about that from both sides. Yes,  
16 there's people who have wildly different views as to what is  
17 right and wrong. But I have got good news for you. We are not  
18 asking you to figure that out.

19 So what I want you to do, if you would, after having  
20 heard such an emotional opening statement and knowing what  
21 these facts are going to be like is take a deep breath because  
22 we are not going to ask you to like what happened. We are  
23 going to ask you to decide whether or not the government that I  
24 represent is responsible for that, should be held liable for  
25 that, for things that it did not do. That's what we are going

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Opening - Mr. Rochon

1 to do. And with your help, with the court's help on the law,  
2 we are going to get through that.

3 At the end of that process, if you take a deep breath  
4 and you don't just think about the pain but you think about  
5 bringing a government to the United States of America for a  
6 trial for things that happened over there and to hold the  
7 government responsible for what in some instance its employees  
8 did but in many instances no employees did, you are going to  
9 find that the evidence doesn't support that.

10 So if you will join with me, ladies and gentlemen, the  
11 first thing I would ask you to do is take a deep breath. We  
12 are going to be here for a while. It's not going to be easy.  
13 OK? I am not telling you it's going to be easy. People are  
14 going to come into court and get on that witness stand and  
15 there is going to be painful testimony, and no one defends what  
16 happened. But the people who did it aren't here.

17 I am here today with the representatives of the  
18 Palestine Liberation Organization for the trial, and I would  
19 like to introduce them to you.

20 First of all, on behalf of the Palestinian Authority,  
21 Hind Khouri. Ms. Khouri is the adviser to the minister of  
22 finance and is here on behalf of the Palestinian Authority.

23 On behalf of the PLO, Mr. Husam Zomlot, who is a  
24 roving ambassador for the PLO.

25 The government and the political party are here,

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Opening - Mr. Rochon

1 brought to the United States for a trial for what others did.  
2 The men and women who did this aren't here. The Al Aqsa  
3 Brigades is not sued here. Hamas, which was by all accounts  
4 responsible for that Hebrew University bombing, is not sued  
5 here. Fatah is not sued here.

6 This case is about whether one can hold on these facts  
7 a government of over 100,000 employees responsible for what a  
8 few of them did during a period of the most intense, passionate  
9 conflict. And the evidence is going to show that they fall way  
10 short on that.

11 So we take a deep breath. We get ready to talk about  
12 the case. One thing I want to do is tell you a little bit more  
13 about who we are because you talk about the Palestinian  
14 Authority, you talk about the PLO and some people have some  
15 associations with that. Some people say PLO and they think  
16 Yasser Arafat or they think bad things. I hope you don't.

17 But if you ever did, I am not worried about it. You  
18 know why? Because you have already told me you're going to be  
19 fair. And we believed you. The court believed you. And we  
20 trust you to be fair. To treat the Palestine Liberation  
21 Organization and the Palestinian Authority like any other  
22 defendant, any other government that would be brought before  
23 you, where people are seeking to hold them liable for what  
24 their employees did, or in many instances where no employee was  
25 involved.

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Opening - Mr. Rochon

1           It's important as we talk about this to realize that  
2           you have two defendants in this case. And we will talk a  
3           little bit about each of them. Plaintiffs' counsel already did  
4           that a little bit. I am going to do it a little bit more.

5           The first thing I want you to know, not all  
6           Palestinians are alike. It's an important thing to think  
7           about. They are not just some lump of things called  
8           Palestinian people. Not all Palestinians are alike.

9           There are a lot of names they throw around. Fatah, Al  
10          Aqsa Martyrs Brigades, Hamas. And they want to say they are  
11          all the same. That Fatah is Al Aqsa, that the PA is the PLO,  
12          is Hamas. And why do they want to do that? Because the  
13          evidence will show that there is not evidence connected to the  
14          defendants who are here.

15          In our system of justice we don't do something called  
16          guilt by association. If your friend does something wrong, you  
17          didn't do something wrong, even if it's your friend. If your  
18          enemy does something wrong, it is definitely not you who did  
19          it. And not every time that an employee of a company or a  
20          government does something is the company liable.

21          When you think about it with a common sense attitude,  
22          you will know when the evidence comes in and your common sense  
23          applies, how would you hold an employer responsible for what  
24          its employees did?

25          So we talk about who we are. I want you to start my

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Opening - Mr. Rochon

1 clients off with a clean slate. It may be hard to do. It's a  
2 foreign country. With the word Palestinian some people have  
3 connotations. That's what you said you were going to do and  
4 that's what we know you're going to do.

5 So there's two sides to this story, right? You don't  
6 need to worry about it. We are not asking you to decide to  
7 make peace to result in a two-state solution. You don't need  
8 to pick a side. Your only job is to listen to the evidence and  
9 decide whether or not the PA or PLO are responsible for the  
10 shootings and bombings at issue.

11 So the PLO, they were created first. The PLO has been  
12 around for a long time. It was created in 1964, 51 years ago,  
13 to represent the cause of the Palestinian people around the  
14 world. The Palestine Liberation Organization represents all  
15 Palestinians around the world. It is international.

16 Ten years after it was created the United Nations  
17 represented the PLO as the legitimate representative of the  
18 Palestinian people, including here in the United States where  
19 the PLO represents the Palestinian people at the United Nations  
20 and in Washington, D.C.

21 Mr. Yalowitz said the PLO created the PA. The  
22 evidence is going to show that the Palestinian Authority was  
23 created in an agreement between the PLO and Israel, brokered by  
24 the United States that said that the Palestinian people needed  
25 a government in the West Bank, and that government in the West

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Opening - Mr. Rochon

1 Bank and Gaza is called the Palestinian Authority. So it was  
2 created out of some agreements that were negotiated in the  
3 '90s. They called them the Oslo Accords. Their name doesn't  
4 matter. The fact is they were created by agreement. A lawful  
5 government pursuant to an agreement.

6 Under this agreement that was created, it was very  
7 important. You remember the map. The Palestinian Authority  
8 does not have full authority even over the West Bank. Under  
9 the agreements, the Palestinian Authority, they created three  
10 areas. A, B and C. In area A, which is only about 20 percent  
11 of the West Bank, Palestinians have civil and security control.  
12 They both run the government and have security control. That  
13 is not where any of these things happened.

14 Area B is also about 20 percent. The Palestinians had  
15 civil but no security control. It's not where any of this  
16 happened.

17 In area C, where essentially it is mostly controlled  
18 by Israel even though they call it the West Bank, it's about 60  
19 percent of it and Israel has civil and security control.

20 But that's not even where these things happened.  
21 These things happened in Jerusalem, outside of the security  
22 control or political authority of the PA. So it's a case in  
23 which these people went to a place outside of the governing  
24 region of the government and did these horrible things.

25 In Jerusalem, the PA has no jurisdiction. So these



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Opening - Mr. Rochon

1 cases come out of a very troubling period between this conflict  
2 called the Second Intifada, where also horrible things  
3 happened, condemnable things. But the question is, did we  
4 cause them to happen?

5 I want to turn shortly to the evidence that they say  
6 shows what happened.

7 First, so you have got two defendants. You have got  
8 two trials. You are going to have to do double duty. When you  
9 hear evidence, you will have to decide is it coming in against  
10 the PLO or Palestinian Authority. At the end of the case when  
11 you come back with your verdict, you are going to be asked how  
12 do you find on the PLO and then how do you find on the  
13 Palestinian authority. Two verdicts. A breakdown on the  
14 incidents, and you will learn in a little bit even as to the  
15 PLO the theories are somewhat different. But the idea is you  
16 have got two trials going on. You don't get double pay, double  
17 duty. You don't get double anything. It's double service, two  
18 defendants.

19 With these different theories, however, they will have  
20 the same result.

21 So let's move to the evidence. Let's talk about what  
22 the plaintiffs have talked about a little bit here.

23 Now, you had those little cards that Mr. Yalowitz gave  
24 you. If you want to pull them out, you can pull them out.

25 We will talk about these incidents because I want to

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Opening - Mr. Rochon

1 be clear. So the January 27, 2002 Jaffa Road bombing. The  
2 Sokolow incident. The evidence will show that not any  
3 Palestinian Authority person was involved in that incident. A  
4 woman blew herself up. She worked for the Red Crescent, which  
5 is like the Red Cross. She didn't work for the PA.

6 A man was convicted for helping her. He didn't work  
7 for the PA. He worked for the Red Crescent.

8 No Palestinian Authority employee was convicted in  
9 these military tribunal trials that he was talking about before  
10 that incident.

11 And in this case, the plaintiffs have a theory called  
12 respondeat superior. It's Latin, I think. I don't really  
13 know. I am a lawyer, but I don't know much Latin. What it  
14 means is you're responsible for what your employees do.  
15 Respondeat superior.

16 In this case that theory about you're responsible for  
17 what your employees did doesn't apply to the PLO at all. They  
18 don't even allege a single PLO person employee was here  
19 involved. The allegation is that PA employees were involved.

20 So as to this incident, no PLO person employee  
21 convicted. No PA employee convicted. And therefore, ladies  
22 and gentlemen, the evidence is going to be, I suggest to you,  
23 it's going to be hard because you're going to have to listen to  
24 the horrible facts of the injuries, but nobody from my client  
25 was convicted for doing it.

F1D8SOK3

Opening - Mr. Rochon

1           So let's go to another one. Mandelkorn. That's June  
2 19th, French Hill. If you heard the opening, you would have  
3 thought all these employees were convicted in all of these  
4 things. Those employees were involved in all of those. No.  
5 You will hear, ladies and gentlemen, that in the Mandelkorn  
6 incident, of course no PLO employee is alleged to be involved  
7 in any of them. It's not their theory.

8           As to the Palestinian Authority, the same thing. No  
9 PA employee convicted.

10           Let's go to Hebrew University, that horrible incident  
11 in what is called the Frank Sinatra cafeteria, the one where  
12 four separate families were injured. A man named Abdullah  
13 Barghouti was convicted for that. PA employee? No. The  
14 evidence will show he wasn't.

15           The evidence will show he was from Hamas, as to which  
16 it's safe to say my clients have a difficult relationship.  
17 Hamas isn't even in the PLO.

18           So, ladies and gentlemen, even on the theory about our  
19 employees, you have to break it down and look at these incident  
20 by incident or you will reach an unfair result, and you don't  
21 want to do that. The stakes are too high.

22           When you look at the other incidents where there are  
23 PA employees who were convicted, you are going to see no  
24 evidence that they were in their uniforms, used PA equipment,  
25 were on the job at the time, were operating in the area where

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Opening - Mr. Rochon

1 they actually had authority. There is no evidence that they  
2 used any PA materials to commit those offenses.

3 They were acting on their own for their own reasons.  
4 Crazy, wrong, contemptible, but not my clients.

5 I want to talk about this employees/nonemployees.

6 So you already heard they are suing under this thing  
7 called the Antiterrorism Act. And under that the burden of  
8 proof falls on the plaintiffs. So they have the burden of  
9 proof to prove what they say against my clients. We don't have  
10 the burden of proof. They do.

11 They are trying to do that in two ways. They are  
12 trying to say the PA is liable for what the employees did and  
13 liable for something called direct support or material support.  
14 They somehow helped even if the employees weren't involved.  
15 Those are the two theories as to the PA. As to the PLO they  
16 only have the second theory.

17 Now as to the first theory, the PA employees did it  
18 and therefore you're responsible. You will hear even in the  
19 three incidents where there were PA employees convicted, no  
20 evidence of them in uniform, participating, in using any  
21 equipment from their employer in these attacks, no evidence  
22 that they were directed in regard to doing it by their  
23 employers.

24 I think what I would like to do is discuss with you  
25 what is the law that Judge Daniels will tell you about that

F1D8SOK3

Opening - Mr. Rochon

1 respondeat superior, when are you liable for that? And roughly  
2 speaking. We will work out the final law later. An act of a  
3 person can only be held against his employer if it's within the  
4 scope of employment. So employers aren't automatically liable  
5 for everything their employees do. If you're a business owner,  
6 you would be happy to hear that because how could you run a  
7 business otherwise.

8 Basically what it says is an act is within the scope  
9 of employment if it is in furtherance of the employer's  
10 business and it is within the scope of the employee's  
11 authority.

12 An employer's business in this context is its  
13 regularly conducted activities, whether commercial or  
14 non-commercial. An act is within the scope of an employee's  
15 authority if it is performed while he is engaged generally in  
16 the performance of his or her assigned duties or if the act is  
17 reasonably necessary or incidental to the employment.

18 Now the employer doesn't need to specifically  
19 authorize the act to get liability, but it's got to be within  
20 the scope of their employment, and there will be no evidence  
21 even as to those incidents where employees were convicted that  
22 it was within the scope of their employment.

23 Now, this material support theory. Really this gets  
24 down to the money that he was talking about. Remember all this  
25 stuff about there's three kinds of payments. There's payments

F1D8SOK3

Opening - Mr. Rochon

1 made to prisoners. There's payments called martyr payments,  
2 and then there are payments made to employees where their  
3 employment salary continues while they are incarcerated.

4 The first thing you need to understand is that these  
5 payments did not cause these events to occur. These payments  
6 were not made because of these events. These payments are  
7 routine in my client's society. My client is essentially a  
8 social welfare state.

9 I will give you an example. In the course of this  
10 martyr society that he talked about, the thing that pays for  
11 so-called martyrs, the first thing you might say is, well,  
12 martyrs, is that everybody who kill themselves. That is anyone  
13 injured whatsoever in the course of this conduct. You don't  
14 even have to be killed. Any injury.

15 40,000 different people received those payments.  
16 These payments aren't being made specially to the three or four  
17 people who are involved in this case. This is something if any  
18 Palestinian is hurt, injured, whatsoever in connection with  
19 this conflict, the Palestinian Authority or the PLO -- in this  
20 instance the money comes from the PLO -- provides payment.

21 Now, how much was that payment? I will give you an  
22 example. One of the people that they talked about in this case  
23 was a guy named Ali Ja'ara, one of the suicide bombers in this  
24 case. He was the Palestinian police officer and you will  
25 actually see the evidence that he in fact had been removed from

F1D8SOK3

Opening - Mr. Rochon

1 the force about two weeks before this happened. How much did  
2 his family get? About \$100 a month.

3 Ladies and gentlemen, the man did not blow himself up  
4 so his family could get \$100 a month. The martyr's payments  
5 didn't cause that event to occur. When someone is lost in that  
6 society, they provide a variety of ways to make up for it. And  
7 in that case, the evidence will show he left behind numerous  
8 siblings, five or six, a mentally ill father, and the house of  
9 the family was destroyed because of his act. So they are put  
10 out of their home as a punishment for the act and the family  
11 received after he blew himself up \$100.

12 The martyr's payments are not evidence of anything  
13 that caused someone to do this. They are for the people left  
14 behind. That 24-year-old man, awful what he did, he didn't do  
15 it so his family could get martyr's payments.

16 The prisoner payments that he talked about. Every  
17 single Palestinian who is incarcerated as a result of this  
18 conflict receives from the Palestinian Authority a payment.  
19 Whether you're arrested and incarcerated for throwing stones at  
20 a tank or anything else, you get those payments.

21 Now, how does this system work? You first need to be  
22 certified as a security prisoner. The International Committee  
23 of the Red Cross certifies them as a security prisoner. Not  
24 the PA. Because it's a conflict, these people don't get along,  
25 and a lot, thousands and thousands and thousands of

F1D8SOK3

Opening - Mr. Rochon

1     Palestinians have been locked up in the course of this  
2     conflict.

3             MR. YALOWITZ:  Objection.

4             THE COURT:  Overruled.

5             MR. ROCHON:  Each of them received these payments if  
6     the International Committee of the Red Cross certifies them as  
7     a security prisoner.

8             The evidence will show that those payments didn't  
9     cause these acts to occur.  They didn't reward these acts.  You  
10    get them no matter what.  And the evidence will also show that  
11    it's not that much money.

12            So the payments to prisoners didn't cause anybody to  
13    decide to go as a Palestinian to an Israeli prison for the rest  
14    of their life so they can get some money.  When you think about  
15    it, your common sense tells you who would want to sit in  
16    prison.  The reason people did these things is not because of  
17    the money.

18            The last one of these is that if an Palestinian has  
19    got a job in the security services and he is locked up by the  
20    other side, they don't take his job away and they continue to  
21    pay him.

22            Now, you may not agree with this system.  You may say  
23    these people are crazy the way they are doing things over  
24    there.  But that's not causing these acts to occur.  If you're  
25    a Palestinian security person and you're arrested by the



F1D8SOK3

Opening - Mr. Rochon

1     Israelis and put in one of their prisons, you don't lose your  
2     job, and you continue to get promotions.

3             Now, I am not equating this conflict to any conflict  
4     we have ever been in, but any time there is a conflict between  
5     two countries, that's the rule. John McCain didn't lose his  
6     rank or his money when he was locked up by the Vietnamese. He  
7     continued to get his salary. He continued to collect it.

8             The evidence, ladies and gentlemen, is that the PA  
9     treats its security personnel who are locked up by Israelis the  
10    same no matter what.

11            So these payments that they want to talk about did not  
12    cause these acts to occur. These prisoner payments did not  
13    cause these acts to occur.

14            And, ladies and gentlemen, when you get down to what  
15    the evidence will show here in this case, the evidence will  
16    show that no witness will come to court and fill the gaps in  
17    their evidence sufficiently.

18            Now, they are going to have payment records. They got  
19    them from us. All these martyrs' payments, those are our  
20    records. We gave them to them.

21            They have got these horrific incidents and they have  
22    got these convictions from the Israeli military tribunal  
23    prosecutions. You will hear about them. I think a guy will  
24    testify tomorrow about them and how they work and what they are  
25    convicted of. Those convictions don't establish any guilt or

F1D8SOK3

Opening - Mr. Rochon

1 responsibility to the PA or the PLO. The payment records don't  
2 establish any such.

3 They actually don't have witnesses who come to court  
4 who know about these incidents from firsthand knowledge and  
5 implicate the PA or the PLO. So they try to fill it up with  
6 people who will give you some opinion testimony. Opinion  
7 testimony comes from people who are considered experts.

8 So they will call some witnesses, two, three, maybe  
9 four, to give their opinions on the evidence. Well, you won't  
10 need someone's opinion on the evidence to reach your own  
11 opinion on the evidence. These kinds of witnesses, they are  
12 called expert witnesses, and they basically get hired to  
13 provide an opinion that supports one side or the other.

14 In this case, listen to those witnesses carefully.  
15 Listen to these so-called expert or opinion witnesses carefully  
16 to see if they are giving you anything you can't figure out on  
17 your own. Listen to see if their opinions are theirs or they  
18 were fed to them.

19 You may say, Mr. Rochon, what do you mean their  
20 opinions were fed to them? Just wait. Wait and see if their  
21 opinions were theirs or they were fed to them.

22 And listen, ladies and gentlemen, to see if they know  
23 anything about this case as opposed to general information that  
24 serves the other side, and listen to see if they just might  
25 have some bias against my clients.

F1D8SOK3

Opening - Mr. Rochon

1 And at the end, you know what you will be instructed  
2 on, that you should not substitute those opinion witnesses for  
3 your own reason, judgment or common sense.

4 So this case will move your emotions, but it's still  
5 not about those emotions. These were tragic and sad and  
6 senseless events, and I am not going to ask you to turn your  
7 hearts away and ignore that sadness. But I am going to tell  
8 you that even when the emotions run high, even when people are  
9 sharing these sad and heartbreaking events, remember, take that  
10 deep breath and remember we are not here to decide whether  
11 these are bad or sad things. You're here to decide whether the  
12 PA or the PLO should be liable for what the evidence will show  
13 they did not do.

14 The perpetrators aren't on trial. Hamas is not sued  
15 here, though the evidence would show that they are the ones  
16 that are responsible for that Hebrew University bombing. So  
17 don't let emotion get the best of you. You get the best of it.

18 And, ladies and gentlemen, passion. Passion will  
19 claim this trial too. Both sides will confuse passion, which  
20 means intensely believing something with proof, both sides will  
21 confuse passion with proof. Passion ain't proof. Passion is  
22 an intense belief in something, but it's not proof. Passion  
23 clouds the judgment, it doesn't help it, and it infects your  
24 reason. Don't let hatred or passion affect you from hearing  
25 the evidence. I know you won't. And be careful to watch out

F1D8SOK3

Opening - Mr. Rochon

1 for when passion on either side, mine or his, gets in the way  
2 of a fair decision.

3 It's reason that we ask of you, your reasoned and fair  
4 judgment, not infected by emotion or passion. As you listen to  
5 the evidence, your reason will help you. There will be a  
6 natural tendency in this case for you to want to do what you  
7 can to address the plaintiffs' pain. It's very human to want  
8 to help. But that's not what we are here to do, to let our  
9 good desires to take over our reason. It may be a basic  
10 instinct to want to right this wrong, but you can't do it by  
11 holding liable the wrong party. We are here to see if the PA  
12 or the PLO should be made to pay for what these others, all  
13 dead or punished already, did.

14 So, ladies and gentlemen, our justice system. These  
15 incidents happened way over there, but they are being tried  
16 here in the United States District Court for the Southern  
17 District of New York. The evidence, a lot of it is going to  
18 come from way over there, but it's not going to be judged by  
19 those standards. My client is not on trial in Israel. My  
20 client is on trial in the United States. We benefit from the  
21 United States justice system. We benefit from the jury system.  
22 We benefit from you because you have agreed to take on this  
23 task.

24 There may be some bias with some of that evidence, but  
25 you will see through it and discount it. We don't judge

F1D8SOK3

Opening - Mr. Rochon

1 defendants in our system by their name. If my client was the  
2 Fredricksburg National Authority and the Fredricksburg  
3 Liberation Organization, they should get the same quality of  
4 justice as they do with their name having the word Palestine in  
5 it.

6 So this case is not being tried in front of just  
7 anyone. It's being tried in front of you, jurors who will get  
8 the evidence only the way it deserves, jurors who will not be  
9 swayed by opinions from biased witnesses, jurors that will not  
10 let the PA or the PLO have their fate determined by anonymous  
11 reports from those with whom they are in conflict, jurors who  
12 like their evidence of liability to be something they can test.  
13 So these defendants have been brought to you and to our justice  
14 system. That's why we picked you.

15 Now, I want to tell you a little bit more about how  
16 this trial is going to go. There is going to be a lot of  
17 witnesses. I am going to make a little bit of a deal with you.  
18 I am not going to ask and my colleagues aren't going to ask a  
19 lot of these people questions. When these victims testify, I  
20 will often say or one of my colleagues will say no questions  
21 after the examination. I don't do that to belittle their pain.  
22 It doesn't help to ask about those things. It doesn't help to  
23 remove the pain. And ultimately those people, those people who  
24 suffered this can't help you with the liability issues, because  
25 we all agree terrible things happened. So if you don't hold it

F1D8SOK3

Opening - Mr. Rochon

1 against the defense, we will frequently say after a witness  
2 testifies, no questions. Because we want to focus on the  
3 evidence that might have something to do with the actual  
4 liability part of the case, not whether something bad happened.

5 So as the trial unfolds, I think maybe we will hear  
6 from a witness today, maybe tomorrow for the first time, and  
7 then the plaintiffs will start getting into some of these  
8 so-called opinion or expert witnesses, not witnesses who  
9 directly have knowledge. And after them a lot of the  
10 plaintiffs will testify.

11 Ladies and gentlemen, when you get to the end of the  
12 trial and you look at what the evidence is, it will not  
13 establish the liability we are talking about.

14 So the way this works is I have had the pleasure to  
15 speak to you today, and I appreciate your attention and the  
16 attention you give this case. I appreciate that you will  
17 provide the justice that's appropriate, a verdict that is  
18 appropriate.

19 I won't get to talk to you again directly until the  
20 very end of the trial, it could be in five or six weeks, and I  
21 will get to speak to you again. And when I speak to you again  
22 in closing argument to discuss what the evidence has been and  
23 how it compares to the law, that will be the last time. The  
24 way this works is I don't get the last word. Plaintiffs'  
25 counsel doesn't get the last word. Even Judge Daniels doesn't

F1D8SOK3

Opening - Mr. Rochon

1 get the last word. You, ladies and gentlemen, have the last  
2 word. It is with your collective voice that you will present  
3 the last word, and based on the law and the facts, based on the  
4 evidence that neither the PA nor the PLO are liable under our  
5 law for what happened over there, they are not liable for what  
6 these other people did. So we look forward to hearing your  
7 voice at the end of this trial and a verdict that the  
8 defendants are not liable.

9 Thank you.

10 THE COURT: Mr. Yalowitz, would you call the  
11 plaintiffs' first witness.

12 MR. YALOWITZ: Yes, your Honor.

13 Your Honor, the plaintiffs call Meshulam Perlman.

14 We may have to get him from outside the courtroom so  
15 we may be just a moment.

16 MESHULAM PERLMAN,

17 called as a witness by the plaintiffs,

18 having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. YALOWITZ:

21 Q. Good afternoon, Mr. Perlman. Thank you for coming in  
22 today.

23 Could you tell the jury where you are from?

24 A. I am from Jerusalem.

25 Q. Where did you grow up?

F1D8SOK3

Perlman - direct

1 A. In Jerusalem.

2 Q. Of what country are you a citizen?

3 A. The State of Israel.

4 Q. What kind of work do you do there in Jerusalem?

5 A. I have a flower shop.

6 Q. I want to take you to the morning of January 29, 2004, but  
7 before I do I would just like you to show us on a map where  
8 your flower shop is in relation to the terror attack at issue  
9 in this case.

10 A. Shall I point to it?

11 Q. I think we need you to use words to describe where the  
12 flower shop is and where the bombing took place.

13 A. The flower shop is on the corner of Ben Maimon and  
14 Arlozorov.

15 Q. Is that where we have drawn a little square and written  
16 flower shop in English?

17 A. Correct.

18 Q. Can you describe for the jury --

19 MR. YALOWITZ: I apologize, your Honor. I am actually  
20 color blind. Maybe one of my colleagues can use it.

21 THE COURT: There is a red button on the top and you  
22 push it and point it.

23 MR. YALOWITZ: I won't be able to see it, but I know  
24 one of my colleagues will be able to.

25 Q. Are we looking at the intersection where the bombing took



F1D8SOK3

Perlman - direct

1 place?

2 A. Yes.

3 Q. Now, what time of day did the attack take place?

4 A. Approximately 8:30, maybe a little later, in the morning.

5 Q. About how far is it from your shop to the intersection?

6 A. Approximately 15 meters.

7 Q. Where were you when the bombing took place?

8 A. I stood behind a wall that hid the garbage receptacle made  
9 out of stone.

10 Q. Were you inside the shop or outside the shop?

11 A. I was outside the shop.

12 Q. In what direction were you looking as you were standing  
13 behind that garbage receptacle?

14 A. I was looking in the direction of Aza Street.

15 Q. Please tell the jury what you saw as you were looking in  
16 the direction of Aza Street.

17 A. I have an iron column there about two meters high on which  
18 I hang hooks. And on the hooks I hang plants and similar  
19 objects. And at the time that I was at eye level, I was  
20 holding the iron hook in order to hang it on the column, and  
21 all of a sudden I heard an explosion, and I saw that the roof  
22 of a bus completely opened up and there were white and red  
23 pyrotechnic displays above on top of the bus. On the basis of  
24 my experience from the military, I knew that it was a terrorist  
25 attack, and I immediately told myself, this is a terrorist

F1D8SOK3

Perlman - direct

1 attack. And I said a few words and I went outside and the  
2 street was empty, with a very few people who were outside on  
3 the street, to try and help the passengers on that bus.

4 (Continued on next page)

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F1D3SOK4

Perlman - direct

1 BY MR. YALOWITZ:

2 Q. Could you describe the scene as you saw it inside the bus.

3 A. The bus was destroyed. The seats were almost entirely  
4 gone. People were lying dead underneath the seats of the bus,  
5 and injured people as well. A very few people were thrown out  
6 of the bus. And passersby who had been walking in proximity to  
7 the bus, they had also been injured.

8 What we, as civilians, as citizens could do, we could  
9 only help those who were not on the bus. Because there is a  
10 danger that there might be an additional bomb, and who knows  
11 what could be there.

12 Q. Could you describe the scene outside the bus as you  
13 perceived it that day.

14 A. The scene outside the bus was one of utter destruction.  
15 Bodies, corpses were flying. They were flying onto balconies  
16 and rooftops. Parts of body, body parts. People were severed  
17 into two, severed into pieces. The first day, the ambulances  
18 arrived within two to three minutes and they took body parts on  
19 stretchers with them. And it was a worse scene than a scene of  
20 war.

21 People who were visibly injured and you could see  
22 blood and flesh on their -- the outside of their bodies, it was  
23 internal organs of people who had been killed.

24 I saw the driver during the time of the terrorist  
25 attack. I saw him slumped, fall over the wheel. Since the

F1D3SOK4

Perlman - direct

1 terrorist attack had taken place and the entire bus had  
2 changed, it was possible for the driver to turn entirely around  
3 in his chair facing the passengers who were sitting. And when  
4 he saw the magnitude of the tragedy, he -- he fell prostrate.

5 And I want to say that I know the fellow. And on the  
6 day of remembrance, on the 29th of January every year, I  
7 participate in their day of remembrance. And that driver never  
8 came back to work.

9 Q. Could you describe the bus mirror for the jury.

10 A. As I stated, I was standing behind the wall of the garbage  
11 receptacle. The height of the wall was almost up to my head.  
12 The external frame of the mirror of the bus smashed into that  
13 wall. And had that wall not been there to protect me, I would  
14 have not -- I would not have emerged alive from the attack.  
15 And on that Sabbath, on that Shabbat, I gave a prayer of  
16 deliverance in the synagogue.

17 Q. I'd like to show you a couple of photographs. We'll begin  
18 with 1123.

19 Can you identify that photograph for the court.

20 A. That's the bus at the scene of the terrorist attack, and  
21 you can see that its roof is blown open.

22 Q. Does that photograph accurately depict the scene as you  
23 recall it?

24 A. Definitely. We can see corpses of people there. We can  
25 see corpses of people that are being placed into body bags.

F1D3SOK4

Perlman - direct

1 MR. YALOWITZ: Plaintiffs offer 1123 in evidence.

2 MR. ROCHON: No objection to 1123.

3 THE COURT: It will be admitted into evidence.

4 (Plaintiff's Exhibit 1123 received in evidence)

5 MR. YALOWITZ: Why don't we go to 1124 for  
6 identification. Ms. Machnes, can we enlarge that on the screen  
7 or is that as large as we can get? Thank you.

8 Q. Mr. Perlman, do you recognize those photos?

9 A. Definitely.

10 Q. Can you describe them for the jury, please.

11 A. In the left-hand picture, we see the evacuation of either  
12 person who was injured or the corpse of a person.

13 And that is not the roughest, most grave picture. I  
14 remember a picture of the stump of a young woman who was  
15 severed from the hip down. And she remained with her tights  
16 on, on the stretcher, when she was being evacuated, and it was  
17 a scene of horror.

18 MR. YALOWITZ: Your Honor, plaintiffs offer 1124 in  
19 evidence.

20 MR. ROCHON: No objection to 1124.

21 THE COURT: It will be admitted into evidence.

22 (Plaintiff's Exhibit 1124 received in evidence)

23 Q. Mr. Perlman, I would like also to play a video. I just ask  
24 have you had the opportunity to review a video with me in  
25 advance of your testimony?

F1D3SOK4

Perlman - direct

1 A. Yes.

2 Q. Does that video accurately depict the scene as you recall  
3 it?

4 A. Yes.

5 MR. YALOWITZ: Your Honor, plaintiffs offer Exhibit  
6 489 in evidence.

7 MR. ROCHON: No objection to 489, your Honor. We've  
8 seen it previously.

9 THE COURT: 489 will be admitted in evidence.

10 (Plaintiff's Exhibit 489 received in evidence)

11 MR. YALOWITZ: Thank you, your Honor. Let's play the  
12 video when you're ready.

13 (Video playing)

14 MR. YALOWITZ: Thank you, your Honor. I have nothing  
15 further for Mr. Perlman.

16 THE COURT: Any questions?

17 MR. ROCHON: No questions, your Honor.

18 THE COURT: Thank you, sir. You can step down.

19 (Witness excused)

20 THE COURT: Can we move forward with your next  
21 witness?

22 MR. YALOWITZ: Your Honor, I need to consult with the  
23 Court about that for a moment.

24 (Continued on next page)

F1D3SOK4

(At the sidebar)

MR. YALOWITZ: Okay, your Honor, we can begin the next witness, get him qualified and so forth, but the binders with the redactions, because I recall your Honor's ruling differently than what you gave me this morning. I respect the Court's ruling, we've got to adjust to it.

THE COURT: We must have all been in a different room than you.

MR. YALOWITZ: I'm not arguing with you. I respect the Court's ruling. I'm telling you I didn't understand it the way you articulated it this morning, so I'm going to need tonight to get those binders adjusted.

THE COURT: How much testimony can you give us before you go to the binders?

MR. YALOWITZ: We can probably get 10 minutes out of him to get him qualified.

MR. ROCHON: I'm open to whatever Mr. Yalowitz prefers. We've had a pretty good day.

THE COURT: I'd like to use that 10 minutes because I want to get the jury to understand that we're using the time efficiently. So why don't you take the 10 minutes, and when you're ready go to the binders, then we can adjourn for the day.

MR. YALOWITZ: Your Honor, what is your rule once a witness goes on the stand? Are we able to consult with him?

F1D3SOK4

1 MR. ROCHON: Actually, your Honor, this question is a  
2 good one. In light of the ruling and making sure the witness  
3 understands the ruling, I would greatly prefer us not start  
4 with him. So we don't have a witness on the stand issue,  
5 Mr. Yalowitz can make sure to communicate the ruling, and we  
6 don't have any inadvertent mistakes. Give him the night.

7 THE COURT: You haven't been able to do that, right?

8 MR. YALOWITZ: I've been a little occupied.

9 THE COURT: Really? Where you been?

10 MR. ROCHON: In light of that, I know you're moving us  
11 along, but safety would suggest to give him a full opportunity.

12 MR. YALOWITZ: Or we can qualify him.

13 THE COURT: Whatever you're comfortable with.

14 MR. YALOWITZ: As long as I can communicate with him  
15 tonight, we get the 10 minutes done, and as long as the cloak  
16 of privilege remains on my communications with him tonight, I'm  
17 fine with that.

18 MR. ROCHON: To accommodate things, we won't invoke  
19 the rule. So he can get his 10 minutes.

20 MR. YALOWITZ: Thank you.

21 (Continued on next page)  
22  
23  
24  
25



F1D3SOK4

1 (In open court)

2 MR. YALOWITZ: Your Honor, the map that we put up, we  
3 didn't sticker it and identify it in evidence.

4 THE COURT: Do you have a number?

5 MR. YALOWITZ: Consistent with the Court's ruling, I  
6 think we should number it as --

7 MR. ROCHON: Is that the flower shop document? No  
8 objection to whatever number they give it.

9 MR. YALOWITZ: We'll mark it as 1149 and offer it in  
10 evidence, your Honor.

11 MR. ROCHON: No objection.

12 THE COURT: Plaintiff's 1149 will be admitted into  
13 evidence.

14 MR. YALOWITZ: Plaintiffs call Nick Kaufman.

15 (Plaintiff's Exhibit 1149 received in evidence)

16 (Witness sworn)

17 NICHOLAS KAUFMAN,

18 called as a witness by the Plaintiffs,

19 having been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. YALOWITZ:

22 Q. Mr. Kaufman, thank you for coming in this afternoon.

23 Could you describe for the jury what you plan to cover  
24 in your testimony.

25 A. What I plan to cover in my testimony is to submit and

F1D3SOK4

Kaufman - direct

1 present to the honorable members of the jury a number of court  
2 documents, originating from the Israel military courts on the  
3 West Bank, and other places. And I will explain those court  
4 documents, I will explain the convictions which one finds  
5 therein. And that's about it.

6 Q. Would you please tell the jury where you were educated.

7 A. Well, if we exclude my secondary education, I was educated  
8 at Cambridge University in the United Kingdom. That was from  
9 1986 until 1989. And after that, I went to study to become a  
10 lawyer at the Inns of Court School of Law in London. That was  
11 in 1989 until 1990. And I was there qualified to become a  
12 barrister.

13 Q. What does a barrister do in the English court system?

14 A. Well, it is basically like you, Mr. Yalowitz, except we  
15 wear wigs in England.

16 Q. So, were you admitted -- I think you may have said this,  
17 but I want to make sure. Were you actually admitted to the bar  
18 of England and Wales?

19 A. That's correct. In February 1991 if I remember correctly.

20 Q. Did there come a time when you left England and moved  
21 somewhere else?

22 A. Indeed I did. In 1993 I left England and I moved to  
23 Israel.

24 Q. What did you do when you moved to Israel?

25 A. Well, being a lawyer, I immediately enlisted in the Israel

F1D3SOK4

Kaufman - direct

1 Defense Force. There I did my articles or internship, and I  
2 served my compulsory military service, because I was by then an  
3 Israeli citizen, in the Israel Defense Force in the Military  
4 Advocate General's Office.

5 Q. What does the Military Advocate General do?

6 A. Well, I think it is similar to the Judge Advocate General  
7 here in the United States. Basically, the Military Advocate  
8 General is responsible for all the legal work of the army.

9 Q. Is that what you did as part of the Office of the Military  
10 Advocate General?

11 A. That's correct. I performed my compulsory military service  
12 in the Military Advocate General's Office. I was in the  
13 international law department.

14 Q. Did you gain admission to the bar of Israel?

15 A. Yes, I did. After my release from my compulsory military  
16 service in 1995, I studied for a year, I did internship, and I  
17 took the bar exams, and I was admitted to the bar of Israel as  
18 well.

19 Q. Now, following your admission to the bar, what kind of work  
20 did you do in Israel?

21 A. Well, after a period of a year or so in a commercial law  
22 firm, which didn't really interest me that much, in 1996 I  
23 joined the Office of the District Attorney of Jerusalem.

24 Q. As a lawyer in the Office of the District Attorney, did you  
25 prosecute crime?

F1D3SOK4

Kaufman - direct

1 A. Yes, I did.

2 Q. What kinds of crimes did you prosecute during your period  
3 of service in the District Attorney's Office?

4 A. Well, there I was there for a long time. I started off in  
5 1996 prosecuting the most minor of offense, small-time drug  
6 offenses, car theft, minor assaults. And by the time I left in  
7 2010, I was prosecuting the most serious types of offenses,  
8 whether it be serious sexual crime, murder, or offenses against  
9 the security of the state.

10 Q. What kinds of crimes did you prosecute that were security  
11 crimes?

12 A. Well, crimes like the crimes we've been discussing today.  
13 I also dealt with at least one espionage case. Those are the  
14 types of offenses which are considered offenses against the  
15 security of the state.

16 Q. When you were practicing in the District Attorney's Office,  
17 did you work in the English language or the Hebrew language?

18 A. Only in the Hebrew language.

19 May I just qualify that?

20 Q. Please.

21 A. Sometimes, of course, if there was a tourist or somebody  
22 who spoke English or French, which I speak pretty well, I would  
23 handle the case in English or French with the victim.

24 Q. During your course of service in the District Attorney's  
25 Office, were you given leave to take some special assignments?

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Kaufman - direct

1 A. Yes, I was, on two occasions. In 2004, I left the Office  
2 of the District Attorney in Jerusalem, and I became a  
3 prosecutor at the International War Crimes Tribunal in the  
4 Hague, that's in the Netherlands. There I was involved in the  
5 prosecution of a Serbian general, who had committed war crimes  
6 in Dubrovnik. That's a seaside resort in Croatia. That was  
7 for a period of a year or so. Then I went back to the Office  
8 of the District Attorney in Jerusalem.

9 Q. Was there a second special assignment that you did as well?

10 A. Yes. Once again, it is not as if it is an assignment on  
11 behalf of the State of Israel. This is a personal decision.  
12 And I left for another period of a year between 2008 until  
13 2009, I joined the International Criminal Court. That's also a  
14 war crimes tribunal in the Hague, in the Netherlands. And  
15 there I was involved in prosecuting African warlords for war  
16 crimes and crimes against humanity.

17 Q. When did you leave the District Attorney's Office?

18 A. In 2010.

19 Q. What kind of work have you been doing since then?

20 A. Well, I entered into private practice. And because of my  
21 experience at the international war crimes tribunals, I have,  
22 when I can get the work and when the clients want me, involved  
23 myself heavily in defending war criminals, and other types of  
24 crime in the national jurisdiction.

25 Q. Now, did you have occasion to serve as a judge in Israel?

F1D3SOK4

Kaufman - direct

1 A. Yes, I did. But I qualify, in the courts in the West Bank.

2 Q. Would you just explain what you did in that capacity, and  
3 would you explain how it came about that you had that  
4 opportunity and what did you in that capacity?

5 A. Well, this was in about 2002. A call went out for people  
6 who were serving in the Office of the Military Advocate General  
7 doing their reserve duty, because every male citizen in Israel  
8 has to do compulsory reserve duty as well after he's released  
9 from his obligatory army service. A call went out to lawyers  
10 asking whether they would like to become judges. I thought,  
11 well, I've been a prosecutor, I've been a defense counsel,  
12 because I had been defending soldiers. So I said, why not have  
13 a go at being a judge as well. So I did. I answered the call.  
14 And in 2002 or thereabouts, I was appointed a judge at the rank  
15 of captain in the reserve corps of the Israeli Defense Force.

16 Q. In preparation for your testimony here today, can you just  
17 tell the jury in general what you did.

18 A. Well, I reviewed a number of case files which were given to  
19 me by the plaintiffs, through lawyers. These case files  
20 originated from the Israel military courts in the West Bank. I  
21 reviewed them, and I reviewed the convictions. I read the  
22 judgments. I read the case files. And afterwards, I went back  
23 to the military courts on my own, to make sure that what I had  
24 received from the lawyers for the plaintiffs exactly reflected  
25 what was actually in those court files.

F1D3SOK4

Kaufman - direct

1 MR. YALOWITZ: Your Honor, may I have a moment to  
2 consult with my colleagues?

3 THE COURT: Sure.

4 MR. YALOWITZ: Thank you so much.

5 (Pause)

6 MR. YALOWITZ: Your Honor, we're at a good breaking  
7 point, if it suits the Court.

8 THE COURT: Surely. Ladies and gentlemen, we're going  
9 to take a break for the day. Don't discuss the case. Keep an  
10 open mind. If you have the cards that were given to you by  
11 Mr. Yalowitz during his opening, just leave them on the seat.  
12 Or if they are in the jury room, just leave them in the jury  
13 room.

14 I am going to ask you to be in the jury room by 9:30  
15 tomorrow morning. I think we've gotten a good start. I want  
16 to keep us on pace.

17 Don't discuss the case, keep an open mind. I'll see  
18 you at 9:30 tomorrow morning.

19 (Jury excused)

20 (Continued on next page)

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1 THE COURT: Anything we need to address before we  
2 adjourn?

3 MR. ROCHON: We had not finished with exhibits that  
4 were related to this witness. Mr. Satin will address any  
5 remaining issues.

6 THE COURT: Mr. Satin, is there a category of  
7 documents?

8 MR. SATIN: Yes, your Honor. One issue, and this  
9 happens repeatedly, in at least three of them, is that the name  
10 Yassir Arafat is within those records. We certainly believe  
11 that same principle that has guided the Court's ruling to other  
12 individuals applies to Yassir Arafat.

13 THE COURT: Is a reference to a person making some  
14 accusation against Yassir Arafat?

15 MR. SATIN: It is. In the various cases it is  
16 individuals implicating him in criminal activity. In fact,  
17 that was the defense of one of the defendants in one of the  
18 cases.

19 MR. YALOWITZ: If Mr. Satin would give me a particular  
20 example, I'll look at it. I think I understand the Court's  
21 ruling, which is, let me just articulate it to make sure I've  
22 got it right. That if it says Yassir Arafat signed a check for  
23 me to commit an act of terror, the Court's ruling is that's not  
24 coming in in this conviction. We'll have to prove that some  
25 other way.



F1D3SOK4

1 Do I have that right?

2 THE COURT: Well --

3 MR. YALOWITZ: I think that's what Mr. Satin is  
4 talking about.

5 THE COURT: Well, I think you're being too specific  
6 about the rule. The rule is much more general and to be  
7 applied across the board. To the extent that you have people  
8 who have made self-incriminatory statements, those statements  
9 come in as statements against interest.

10 To the extent those same people say "I did it and  
11 Mr. Yalowitz did it too," those statements accusing  
12 Mr. Yalowitz don't come in through that witness, because that  
13 is not an exception to the hearsay rule.

14 If you want someone to come in and accuse Mr. Yalowitz  
15 of committing the crime, then you should put that person in the  
16 courtroom under oath and have that person give that testimony.

17 That's the basic rule. This isn't a fancy rule. So,  
18 I thought it was clear that if you had some statement that you  
19 were offering, and a basis for offering that statement was it  
20 was a statement against interest, that you could offer the  
21 statement that the person admitted their own participation.  
22 You cannot offer a statement by some person who was being  
23 interrogated or was pleading guilty or was accused of doing it  
24 with somebody else, and they stand there accusing the somebody  
25 else. I don't care whether it is Yassir Arafat or anybody

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1 else.

2 So, if that is the nature of the statement, no, you  
3 can't use that person's out-of-court statement as evidence that  
4 the other person that he's talking about in that out-of-court  
5 statement committed the offense that you're trying to tag him  
6 with.

7 I don't know why we didn't have a clear understanding  
8 about that.

9 MR. YALOWITZ: All right. I think I need to consult  
10 with one of my colleagues who wants to talk to me.

11 THE COURT: All right.

12 MR. YALOWITZ: Thank you, your Honor. Bear with me.

13 THE COURT: Okay.

14 (Pause)

15 MR. YALOWITZ: Your Honor, Ms. Romeo has an issue that  
16 she's better at explaining than I am.

17 MS. ROMEO: So I just want to be clear so we're  
18 redacting the documents correctly and we can keep moving  
19 tomorrow.

20 THE COURT: I'm obviously not explaining myself well.

21 MS. ROMEO: We have the two sets of documents. We  
22 have the IMC conviction binder, which has documents that have  
23 come in as records of conviction under the hearsay exception.  
24 We took the Court's rulings after looking at the transcripts to  
25 be that we needed to redact all names and corresponding

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1 identifying information for that name.

2 THE COURT: Accusing a third party of committing a  
3 crime.

4 MS. ROMEO: Of witnesses and -- oh, actually witnesses  
5 and accomplices was used, the term was used in a couple of  
6 conferences. So we went through all the documents, and any  
7 time a name popped up, we redacted that. We also redacted,  
8 with the exception that we've discussed with the Court where  
9 there is the independent corroborating evidence.

10 THE COURT: I am not sure what you mean by  
11 "witnesses," because I don't think we had a specific discussion  
12 about witnesses. The discussion was whether or not you wanted  
13 to use someone's out-of-court statement admitting their own  
14 guilt and accusing a third party at the same time that you  
15 wanted to use the accusation against the third party as  
16 evidence in this case, even though it does not meet a hearsay  
17 exception, particularly if it is not a statement against  
18 interest.

19 I don't know how many times I can say this. And I  
20 don't understand why you don't understand what I'm saying. If  
21 it is accusing a third party by someone's statement out of  
22 court, then it is not coming in. And I don't care what form it  
23 is. All right?

24 MS. ROMEO: Okay.

25 THE COURT: You make sure that whatever document you

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1 want to offer does not have in it, that you want to use for  
2 that purpose, an accusation against a third party which no one  
3 has the ability to test because that person is not a witness in  
4 this courtroom.

5 MS. ROMEO: Okay. Can I just ask for one  
6 clarification?

7 THE COURT: Sure.

8 MS. ROMEO: That rule, is that qualified by the  
9 exception if we have the independent corroborating evidence  
10 that that person was in fact involved in that crime in the  
11 manner described? Because we discussed a few exceptions to  
12 that in one of the conferences. I believe it was last week.  
13 Because this issue of Yassir Arafat has been raised before as  
14 well as I believe --

15 THE COURT: Well, let me put it this way. I might  
16 extend some leeway in that regard, if the evidence is already  
17 independently before the jury. If the argument is that, oh,  
18 you can't believe that evidence, it may or may not be relevant  
19 that someone else said it too. Not for its truth. But if  
20 someone else said it too.

21 But we don't have that at this point. All right? So  
22 if you want to put somebody on the stand to say "I was there  
23 and I saw Yassir Arafat do it," then you're right, I'm not  
24 particularly concerned about a third party also saying Yassir  
25 Arafat did it, if it is offered for some other purpose than to

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1 independently prove that fact.

2 But right now what you're doing is you have a bunch of  
3 convictions, and the issue was you cannot prove the criminal  
4 activity of third parties by just taking people who have their  
5 own interest in accusing third parties out of court or during  
6 interrogations or in another court not subject to  
7 cross-examination here, by saying that person must be guilty of  
8 this because this other person when he pled guilty accused that  
9 person.

10 That's the rule. Okay? So you can figure out where  
11 that rule applies.

12 MS. ROMEO: We understand, your Honor.

13 THE COURT: I didn't ask you to do a ministerial task.  
14 I asked you to look through your documents, figure out where  
15 that person is accusing a third party, and take out the  
16 references that would be in any way accusatory of the third  
17 party.

18 MS. ROMEO: We understand.

19 THE COURT: Whether it is an accusation directly by  
20 name or whether that is an implication and an accusation by  
21 circumstantial evidence that you want the jury to rely solely  
22 on that statement to conclude that that person did it.

23 MS. ROMEO: We understand. Okay.

24 THE COURT: I don't know how else to explain this 10  
25 more times.

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1 MS. ROMEO: We understand the Court's ruling. I just  
2 have one question. So the question is obviously these are  
3 translations of Hebrew language documents. Should we also  
4 go -- it is going to be extraordinarily difficult to do the  
5 Hebrew overlay. So what would be possible is to do the  
6 redactions on the translations for tomorrow.

7 MR. ROCHON: That's going to serve for tomorrow  
8 because this witness speaks English. And if we are going to  
9 show him the English versions, we don't have to worry about it.

10 THE COURT: You can discuss that first and see if  
11 there is a problem. But, I have to go back over the jury  
12 questionnaires, but my recollection is I don't think anybody on  
13 this jury speaks Hebrew or Arabic.

14 MR. ROCHON: We were pretty careful on that one, your  
15 Honor.

16 THE COURT: I'm not particularly concerned about that  
17 issue. I'm more concerned they are going to rely on you for  
18 the accuracy of the English translation, what that English  
19 translation says, means, and for what purpose you're offering  
20 it to them. That's what I'm concerned about.

21 Okay. So I think that you both have to do a little  
22 bit more analysis to make sure that the purpose of why I said  
23 you should redact it appropriately is being addressed. All  
24 right?

25 MS. ROMEO: We understand, your Honor.

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1 THE COURT: Anything else other than that?

2 MR. ROCHON: No, sir.

3 THE COURT: All right. Then I think we got a good  
4 start. Let's try to keep moving along. If there are any  
5 issues we need to address before the jury comes out, let me  
6 know right away at 9:30 so we don't keep them waiting.

7 MR. YALOWITZ: I do have one issue, your Honor. It is  
8 a little warm in the room.

9 THE COURT: You want me to --

10 MR. ROCHON: I'm with you. I agree with him.

11 MR. YALOWITZ: It wouldn't be bad if we cooled it down  
12 a little bit.

13 THE COURT: I'll have them lower the temperature for  
14 you tomorrow. I guarantee you after we do that, you'll be  
15 telling me it's too cold. That's what happens. I'll make sure  
16 we have a lower temperature.

17 (Adjourned until January 14, 2015, at 9:30 a.m.)  
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